Supreme Court, U.S.
FILED

99177 6 MAY 8 - 2000

OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MERRICK J. BRODSKY &
HOWARD K. BRODSKY,
Petitioners,

v.

UNION LOCAL 306, MOTION PICTURE PROJECTIONISTS, VIDEO TECHNICIANS AND ALLIED CRAFTS, I.A.T.S.E., et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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138 pp

QUESTIONS PRESENTED

1. Are per capita tax increases levied by a parent labor organization upon a local union with which it is affiliated, that are passed-along by that local union and directly charged to its members by the local union in the guise of local union dues increases, lawful under §101(a)(3)(A) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §411(a)(3)(A)?

2. Are "percentage dues" that have been uniformly levied each quarter for thirteen years by a local union upon the basic weekly earnings of its affected members, pursuant to the dues provisions of its constitution and for the purpose of meeting its general and current financial obligations, "periodic dues" or "work assessments", as those terms are employed in the labor law context?

3. Does an open vote based on a majority of those attending and voting at a local union membership meeting on a resolution presented by the local union's administration to increase the levy of "percentage dues" from the "basic weekly earnings", as provided by the local union's constitution, to encompass overtime hours at straight-time rates earned by the affected union members, which members were given insufficient notice of said resolution as provided in the local union's by-laws (one month's notice as required by said bylaws, as opposed to less than two week's notice given by the local union), also in violation of (1) the local union's constitution, which requires two readings of any amendments or alterations of said constitution at two consecutive union membership meetings and a vote of 2/3 of the members voting valid [secret] ballots; and/or (2) § 101(a)(3)(A) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411(a)(3)(A)?

4. Are members of a local union and its parent labor organization who challenge the aforesaid pass-alongs and percentage dues increases - and decline to pay them - properly expelled from said labor organizations even though said members have

tendered their "proper" union dues pursuant to both labor organizations' respective constitutions?

5. Should expelled members of a local union be accorded putative rights of membership and/or the protections of § 101 et seq. of the Bill of Rights of Members of Labor Organizations, Title I of LMRDA, 29 U.S.C. § 411 et seq., during the pendency of their internal appeal of their expulsions before the parent labor organizations' higher tribunals?

6. Are high officials of a parent labor organization who respectively submit a pre-dated "clarification" of their determination of an internal appeal of members of said organization and a local union affiliate, when said organization's constitution affords no procedure for such "clarification", and proceed to frame such "clarification" as the basis of the members' already-submitted appeal to the labor organization's higher tribunal, acting *ultra vires* of their respective constitutional authorities and/or in bad faith and/or in violation of § 301(a) of the Labor Management Reporting Act, 29 U.S.C. § 185(a)?

7. Did the District Court commit reversible error - and by extension the Circuit Court in its summary affirmance of the District's Court's Order - when it disregarded the oversight safeguards provided in a local union's constitution of an independent tabulation by a ballot committee of the ballots of a dues increase referendum conducted by said union, and instead ordered two high officials of said union, who happened to be the very sponsors of said referendum, to tabulate those ballots behind closed doors without any oversight whatsoever, thus tainting the resultant passage of the dues increase which had failed on seven prior occasions?

PARTIES TO THE PROCEEDING

Petitioners

Merrick J. Brodsky and Howard K. Brodsky

Respondents

Union Local 306, Motion Picture Projectionists, Video Technicians and Allied Crafts, I.A.T.S.E.; Joel Deitch, Individually, and as Secretary-Treasurer of Union Local 306; Michael Goldberg, Individually, and as Business Representative of Union Local 306. Steve D'Inzillo, Individually, and as President of Union Local 306; International Alliance of Theatrical and Stage Employees, AFL-CIO; Thomas C. Short, Individually, and as President of the International Alliance; and Michael W. Proscia, Individually, and as General Secretary-Treasurer of the International Alliance

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ARGUMENT 1

The per capita tax increases levied by the International Union upon its sister Local Union affiliate, which increases are passed along by that Local Union and directly charged to its members in the guise of Local Union dues increases, are unlawful under Section 101(a)(3)(A) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411 (a)(3)(A).

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ARGUMENT 2

The "percentage dues" that has been uniformly levied each quarter for thirteen years by the Local Union upon the basic weekly earnings of its affected members, pursuant to the dues provisions of its Constitution and for the purpose of meeting its general and current financial obligations, are "periodic dues", not "work assessments", as those terms are employed in the labor law context.

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ARGUMENT 3

An open vote based on a majority of those attending and voting at the Local Union's membership meeting on a Resolution presented by said Union's administration to increase the levy of "percentage dues" from the "basic weekly earnings", as provided by the Local Union's Constitution, to encompass overtime hours at straight-time rates earned by the affected members, which members were given insufficient notice of said Resolution as provided in the Local Union's By-Laws (one month's notice as required by said By-Laws, as opposed to less than two week's notice given by the Local Union), was in violation of (1) the Local Union's Constitution, which requires two readings of any amendments or alterations of said Constitution at two consecutive union membership meetings and a vote of 2/3 of the members voting valid [secret] ballots; and/or (2) Section 101(a)(3)(A) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411(a)(3)(A).

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ARGUMENT 4

The Petitioners were improperly expelled from the Local and International Unions even though they tendered their "proper" union dues pursuant to both Unions' respective Constitutions.

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ARGUMENT 5

The Petitioners should have been accorded putative rights of membership and/or the protections of Section 101 et seq. of the Bill of Rights of Members of Labor Organizations, Title I of LMRDA, 29 U.S.C. § 411 et seq., during the pendency of their internal appeal of their expulsions before the International Union's higher tribunals.

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ARGUMENT 6

Short, who as the International Union's President, submitted a pre-dated "clarification" of his Determination of the Petitioners' internal appeal thereof, when the International Union's Constitution affords no procedure for such "clarification", and Proscia, who as the International Union's General Secretary-Treasurer, proceeded to frame such "clarification" as the basis of the Petitioners' already-submitted appeal to the International Union's higher tribunal, acted *ultra vires* of their constitutional authorities and/or in bad faith and/or in violation of Section 301(a) of the Labor Management Reporting Act, 29 U.S.C. § 185(a).

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ARGUMENT 7

The District Court committed reversible error – and by extension the Circuit Court in its summary affirmance of the District's Court's Order – when it disregarded the oversight safeguards provided in the Local Union's Constitution of an independent tabulation by a ballot committee of the ballots of a dues increase referendum conducted by said Union, and instead ordered two high officials of said Union, who happened to be the very sponsors of said referendum, to tabulate those ballots behind closed doors without any oversight whatsoever, thus tainting the resultant passage of the dues increase which had failed on seven prior occasions.

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OPINIONS BELOW

The Summary Order of the United States Court of Appeals for the Second Circuit ("Circuit Court") "affirm[ed the Opinion and Order of the District Court of Southern District of New York ("District Court") granting summary judgment to the Defendants-Respondents] for substantially the reasons given by the [D]istrict [C]ourt". The Summary Order is, upon information and belief, published at 139 LC (CCH) 10525. A copy of the Summary Order is included in the Appendices at Appendix A, at 1-a to 3-a.* The Opinion and Order ("Opinion") of the District Court is reported in the slip opinion as *Merrick Brodsky and Howard Brodksy* [sic] *v. Union Local 306, et al.* 1999 WL 102763 (S.D.N.Y.); it is also published at 161 L.R.R.M. (BNA) 2240, 138 LC (CCH) 10478. The Opinion is included in App. B, at 4-a through 15-a. The District Court ordered entry of the final Judgment on February 26, 1999, which is printed in App. C, at 16-a and 17-a.

STATEMENT OF JURISDICTION

The Circuit Court issued its Summary Order on February 8, 2000. This Petition is filed within 90 days of the entry of the Summary Order pursuant to Supreme Court Rule 13.1. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1254(1) and 2106.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Article VI, Clause 2
Supremacy Clause

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States,

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* Citations are to the Appendices filed with this Petition pursuant to Supreme Court Rule 14(i). Each Appendix ["App."] is so listed and its pages so numbered.

shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * * * *

U.S. Constitution, Article I, Section 8, Clause 3
Commerce Clause

The Congress shall have the Power...

To regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes.

* * * * *

Labor-Management Reporting and Disclosure Act ("LMRDA")
§ 3 (o), 29 U.S.C. § 402 (o)

§ 3. For the purposes of title I...of this Act –

...

(o) "Member" or "member in good standing", when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership of such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

* * * * *

Labor-Management Reporting and Disclosure Act ("LMRDA")
Title I. Bill of Rights of Members of Labor Organizations
§ 101(a) (1), (3) & (5), 29 U.S.C. § 411 (a) (1), (3) & (5)

§ 101. (a)(1) *Equal rights.* – Every member of a labor organization shall have equal rights and privileges within such organization...to vote in...referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(3) *Dues, Initiation Fees, and Assessments.* – Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization...shall not be increased, and no general or special assessment shall be levied upon such members, except -

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organizations entitled to such notice...

(5) *Safeguards Against Improper Disciplinary Action.* – No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

* * * * *

Labor Management Relations Act ("LMRA")
§ 301 (a) & (b), 29 U.S.C. § 185 (a) & (b)

§ 301. (a) Suits for violation of contracts between...labor organizations [representing employees in an industry affecting commerce as defined by this Act] may be brought in any district

court of the United States having jurisdiction of the parties, without respect to the amount in controversy...

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act...shall be bound by the acts of its agents. Any such labor organization may...be sued as an entity and in behalf of the employees whom its represents in the courts of the United States...

* * * * *

Labor Management Relations Act ("LMRA")
§ 302 (c)(4), 29 U.S.C. § 186 (c)(4)

§ 302. (c)(4) with respect to money deducted from the wages of employees in the form of membership dues in a labor organization...

STATEMENT OF THE CASE

Respondent Union Local 306 et al. ("**Local Union**"), by and through its Secretary-Treasurer **Respondent Joel Deitch** ("**Deitch**"), directly passed along the **Respondent** parent **International Alliance of Theatrical and Stage Employees**' ("**International Union**") several increases in its per capita tax – a tax levied upon each and every of its sister affiliate local unions based on its number of members[1] – to the **Local Union**'s members in the guise of dues increases, in spite of the fact that the **Local Union**'s quarterly dues with its percentage dues levy on the "basic weekly earnings" of its affected members, as set forth in its Constitution,[2] more than met the **International Union**'s minimum requirement for quarterly dues, as set forth in *its* Constitution.[3]

The first of such per capita tax "pass-alongs" (an additional $2 each quarter) was subsequently formalized by a Resolution put forth by the **Local Union**'s Administration and **Deitch** on March 29, 1996[4] - without the appropriate notice requirements set forth in the **Local Union**'s By-Laws.[5] The Resolution also sought to increase the percentage dues levy from the "*basic* weekly earnings" to encompass *overtime* hours at straight-time rates earned by the affected union members. (The

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[1] The relevant sections of the **International Union**'s Constitution (hereinafter "IC") are Article Fourteen ("Revenues"), Section 1 ("Per Capita Tax") and Article Nineteen ("Powers and Duties of Local Unions"), Section 12 ("Financial Obligations"); *see* App. D, at 19-a and 20-a.

[2] Article VII ("Revenue"), Section 1, paragraph 2, as amended, of the **Local Union**'s Constitution (hereinafter "LC"); *see* App. E, at 24-a. The overwhelming majority of the members of the **Local Union** at the times in question were theatre projectionists and hence were subject to the percentage dues levy. The **Petitioners Merrick Brodsky** and **Howard Brodsky** ("the **Brodskys**" or "the **Petitioners**") are employed as theatre projectionists.

[3] IC, Article Nineteen ("Powers and Duties of Local Unions"), Section 14 ("Quarterly Dues"), *see* App. D, at 20-a.

[4] An excerpt from the Resolution notice and the text of the Resolution is reproduced in App. F, at 26-a and 27-a.

[5] *See* **Local Union**'s By-Laws, Section 20, App. E, at 25-a.

successive three "pass-alongs", respectively an additional $2, $3, and $3 for each quarter, were levied by fiat by the **Local Union** and **Deitch**.)

The first internal appeal was brought on April 29, 1996 by **Elizabeth Gross** ("**Gross**"), a member of the **Local Union**, to the parent **International Union**'s President, **Respondent Thomas C. Short** ("**Short**").[6] He completely disregarded her appeal. The **Petitioners** concurrently challenged the constitutionality and lawfulness of the "pass-alongs" at the local level, throughout the remainder of 1996 and into 1997, in an exchange of correspondence between them and **Deitch** and **Respondent Michael Goldberg** ("**Goldberg**"), the Business Representative of the **Local Union**. When the **Brodskys** were ultimately threatened with expulsion for their withholding of the $2 per quarter pass-along, they, together with **Gross**, appealed to the **International Union** and **Short.** The **Petitioners** also requested a stay of their expulsion during the pendency of their internal appeal.[7]

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[6] *See* IC, Article Seven ("The International President"), Section 5 ("Judicial Powers"), App. D, at 18-a. It has been the "common law" of the **International Union** that all correspondence of whatever kind addressed and forwarded to an officer of said Union be answered by the recipient within thirty (30) days of its receipt, a custom and practice most likely derived from IC, Article Seventeen ("Appeals"), Section 2 ("Time Allowed for Filing"), id., at 20-a. This notwithstanding, **Short** let this first appeal languish and the controversy went unaddressed and unresolved.

[7] The **Petitioners**' and **Gross**' internal appeal to the **International Union** and its President **Short** is reproduced in its entirety in App. G, at 28-a through 38-a.

It should be noted that all the while the **Brodskys** were paying their dues as set forth in the **Local Union's** Constitution; *see* footnote "2", p. 1, *supra*; *also see* "Argument 4", *infra*, p. 19. The **Petitioners** posit that they were only obligated to pay their constitutional and *proper* dues; *see* IC, Article Twenty-One ("Privileges and Duties of Membership"), Section 12 ("Financial Obligations"), App. D, at 21-a. It should also be noted that the **Brodskys**' dues submissions were accepted by the **Local Union** and **Deitch**, who even affixed the tax stamps upon their respective membership cards for the first two contested quarters, which is "evidence of such payment" of "proper" dues; *see* footnotes "1" & "3", p. 1, *supra*, in particular IC, Article Nineteen, Sections 12 & 14.

In his Determination, dated August 11, 1997, **Short** left unaddressed the issues of the expanded levy on overtime at straight-time rates earned by the affected projectionists. He, in turn, held that the **Local Union**'s percentage dues component was a "work assessment...not to...[be] consider[ed]...a factor in determining quarterly dues"[8], this notwithstanding the specific language of the **Local Union**'s Constitution and said component's periodicity, regularity, uniformity and generality of use. **Short** further held that the **Local Union**'s dues were $37, the minimum quarterly dues mandated by the **International Union**'s Constitution that its sister local affiliates are to impose upon their members.[9] Moreover he invited the **Brodskys**' expulsion when he "s[aw] no reason to grant or deny a stay of any action Local 306 might take to enforce its current dues structure".[10]

On September 8, 1997, the **Petitioners** appealed to the General Executive Board ("G.E.B.") of the **International Union**, its higher tribunal.[11] Inasmuch as the **Brodskys** were compelled to defer to **Short**'s Determination,[12] they limited their dues payments to $37 whilst, ironically, *they* asserted the unreasonableness of **Short**'s interpretation and the harm it would have to the fiscal well being of the **Local Union**. The **Petitioners** reiterated their prayer that the **International** and **Short** stay their expulsion during the pendency of our appeal "in conformity with the spirit and

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[8] **Short**'s Determination in the **Petitioners'** and **Gross**' appeal is reproduced in its entirety in App. H, at 39-a and 40-a.

[9] The minimum quarterly dues then required by the **International Union** was $37, i.e. "not less than Five Dollars ($5.00) over and above the amount of the per capita tax", which was then $32. *See* footnote "3", p. 1, *supra*, in particular IC, Article Nineteen, Section 14. **Short** conveniently disregarded the fact that the **Local Union**'s dues percentage levy on the basic weekly earnings of its affected members, the **Brodskys** included, more than met the **International Union**'s minimum requirement – indeed by several hundred fold!

[10] *See* App. H, at 40-a, last paragraph.

[11] *See* the **Petitioners**' and **Gross**' internal appeal to the **International Union**'s General Executive Board, App. I, at 41-a through 61-a.

[12] *See* IC, Article Seven ("The International President"), Section 6 ("Interpret Constitution and By-Laws"), first paragraph, App. D, at 18-a.

substance of the Constitution and By-Laws and with regard to the equities of the circumstances".[13]

The **Brodskys**' prayer again went unheeded. They were subsequently summoned by **Deitch**, in a letter dated November 21, 1997, to appear before the **Local Union**'s Executive Board on December 9, 1997 "to discuss [their alleged] dues delinquency and [their] expulsion from Local 306".[14] At the meeting **Deitch** presented to the undersigned a letter "just faxed to **[Deitch]**" by the **International Union**. Said letter was dated "October 10, 1997", and addressed to the undersigned. This was the first time the **Petitioners** saw this letter.[15] Therein **Short** offered an improper and untimely "clarification" of his Determination, in contravention of the **International Union**'s Constitution.[16]

The **Brodskys** took exception to **Short**'s pre-dated letter and its constitutional infirmity.[17] Thereafter, in his notice to the **Petitioners**, **International Union**'s General Secretary-Treasurer, **Respondent Michael W. Proscia** ("**Proscia**") proceeded to cloak **Short**'s letter with legitimacy by cognizing it as the very basis of the **Petitioners**' already-submitted appeal to the higher tribunal.[18]

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[13] Id., second paragraph.

[14] **Deitch**'s summons is reproduced in its entirety in Appendix J, at 62-a.

[15] **Short**'s "clarification" is reproduced in its entirety in Appendix K, at 63-a and 64-a.

[16] The relevant provisions of the IC are as follows: Article Seven ("The International President"), Section 6 ("Interpret Constitution an By-Laws"), second and third paragraphs and Article Seventeen ("Appeals"), Section 1 ("Right of Appeal"), App. D. at 18-a through 20-a. Note the *singular, not plural* case in each of the italicized terms in the aforesaid provisions.

[17] The **Brodskys**' response to **Short**'s clarification is reproduced in its entirety in Appendix L, at 65-a through 68-a.

[18] **Proscia**'s notice is reproduced in its entirety in Appendix M, at 69-a and 70-a. The **Petitioners** submit that **Proscia**'s act was in contravention of his duties under IC, Article Nine ("General Secretary-Treasurer"), Section 1 ("Routine Duties"), subsection "c"; *see* App. D, at 19-a.

The **Brodskys** took further exception to **Proscia**'s action.[19] The G.E.B (on or about late February 1998) and ultimately the **International Union**'s Convention (on July 21, 1998) summarily upheld **Short**'s Determination.[20]

Concurrent to the above events, the **Local Union** sought to increase the percentage dues component of its quarterly dues seven times by constitutional amendment referenda it labeled

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[19] The **Petitioners**' response to **Proscia**'s notice is reproduced in its entirety in Appendix N, at 71-a and 72-a.

[20] *See* App. O, at 73-a and 74-a for the G.E.B.'s affirmance and App. P, at 75-a through 78-a for the Convention Committee's affirmance. Notwithstanding the plethora of issues put forth in the aforesaid papers, the **International Union**, by and through its Committee, continued the practice of its President and GEB by failing to address said issues, ignoring the controlling law on the subjects of per-capita tax "pass-alongs" and "*dues*" versus "(*work*) *assessments*", and further mischaracterized the facts and circumstances of the **Brodskys**' and **Gross**' internal appeal.

Note in its opening statement the Committee represented that "*Mr.* Merrick Brodsky and *Mr.* Howard Brodsky, *who had been expelled from Local 306 for non-payment of dues*, and *Sister* Elizabeth Gross, appeal from a decision of International President Short which was upheld by the [GEB]", App. P, at 77-a, first paragraph (emphasis added). This presented the erroneous impression that the **Petitioners** were expelled *before* they commenced their appeal and that their expulsion was bona fide, i.e. for non-payment of dues. In fact, the **Brodskys** were not expelled until *after* their appeal went before the GEB. Moreover the **Petitioners**, at all times relevant to this controversy, *more* than paid their "dues", defined as "$37" by Defendant **Short**, the GEB and the Committee (*see* footnote "7", last paragraph, p. 2, *supra*). And in fact, during the pendency of the **Brodskys**' appeal to **Short** and the **International Union**, and *before* they were expelled, their *timely* tendered dues payments were returned to them by the **Local Union** and **Deitch**.

The Committee also distorted and reduced the issues of the Appeal to: "The appellants challenged President Short's ruling as upheld by the [GEB]. They also claimed, among other things, that the quarterly dues should not have been raised since Local 306 also charges a three-and-one-half percent (3½%) *work assessment*", id., third paragraph (emphasis added). Unsurprisingly, the Committee "unanimously recommend[ed] that the decision of the [GEB] be upheld", id., sixth paragraph. Thereafter the delegates at the **International Union**'s Convention acted on the aforesaid recommendation "and a vote was taken on [the **Petitioners**' and **Gross**'] appeal", id., at 76-a, first paragraph.

"initiatives". The membership voted down each and every of these seven "initiatives".[21]

At a **Local Union**'s membership meeting during one of these initiatives (November 1996), the undersigned proposed an amendment thereto to provide a legitimate mechanism to harmonize the **Local Union**'s basic dues component ($30) with the **International Union**'s per capita tax (then $32). After the amendment was voted on and *passed* by the attending members, it was unilaterally rescinded on the spot, by **Respondent Steve D'Inzillo** ("**D'Inzillo**"), the **Local Union**'s President, in contravention of the **Local Union**'s Constitution and By-Laws[22], Robert's Rules of Order, the undersigned's rights of free speech under Section 101(a)(1) of the LMRDA, 29 U.S.C. § 411(a)(1), and the equal rights and privileges thereunder of the attending members who voted in favor of the amendment. It is to be noted that this took place *before* the **Petitioners**' expulsion (on or about November 1997). These facts were entirely overlooked by the District and Circuit Courts in its cursive dismissal of the **Brodskys**' LMRDA claims.

During the consideration of the eighth "initiative" at the **Local** Union's membership meeting in March 1998, **D'Inzillo** quashed the undersigned's right to submit an amendment thereto. The **Petitioners** commenced this action shortly thereafter and, inter alia, sought to enjoin the balloting. The District Court, at the behest of the **Respondents**' counsel, appointed **Deitch** and

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[21] *See* an excerpt from a representative ballot for one of the eight **Local Union**'s dues amendment "initiatives", App. Q, at 79-a. It should be noted that throughout every dues increase amendment "initiative", the **Local Union** and **Deitch** merely sought to increase the *percentage dues* component of the quarterly dues. They made no attempt to properly amend the *basic dues* component thereof, i.e. $30 (*see* footnote "2", p. 1, *supra.*). Instead it improperly "passed-along" the per capita tax increases as increases to the *basic dues* component. *See* an excerpt from **Deitch**'s letter to the **Local Union**'s members, App. R, at 80-a. The **Local Union** and **Deitch** even began to refer to the component as "*per capita* dues"! *Also see* an excerpt from the **Local Union** Executive Board's letter to its members, App. S, at 81-a.

[22] *See* LC, Article V ("Duties of Officers"), Section 1 ("President") and By-Laws, Section 19, App. E at 23-a through 25-a.

Goldberg - the very sponsors of the "initiative" - to tabulate the ballots, thus disregarding the **Local Union**'s constitutional safeguards of an independent tabulation[23]. The **Brodskys** sought a stay of the above with the Circuit Court. The Court denied their application. This time the "initiative", unsurprisingly, "passed".

ARGUMENT FOR GRANTING THE WRIT

The District Court, rather than conducting a balanced review of the facts and law of the case, erred on the facts, ignored the controlling case law in the Circuit, and engaged in judicial activism that prejudiced the rights of the **Petitioners** and their co-unionists. Indeed the District Court's Opinion provides entrenched union administrations with a mechanism to quash opposition by expelling dissenting members rather than to exact a lesser "discipline" so as to end run those members' judicial recourse, and short-circuit the protections of the Bill of Rights of Members of Labor Organizations under Title I of the LMRDA. All of the above was overlooked by the Circuit Court in its summary affirmance.

Additionally, the need for judicial guidance on the issues of per capita tax "pass-alongs" qua dues increases, wherein there are conflicting holdings in the Circuit Courts, and what constitutes "dues" and "assessments" in the context of labor law, are acute.

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[23] Compare I.C, Article IV ("Nomination and Election"), Section 5, as amended, App. E, at 23-a, with I.C, Article XI ("Amendment"), Section 2, as amended, id, at 24-a. These provisions are the *only* amendments relating to "secret mail ballots] referend[a]" and "Constitutional amendments or alterations" submitted by the **Local Union** and **Deitch** (and/or the latter's predecessor **Phil Shafran**) to the United States Department of Labor ("DOL") and on file there. The **Brodskys** and other members have repeatedly tried - unsuccessfully - to obtain the amendments to the **Local Union**'s Constitution and By-Laws, last published in 1972, from said **Respondents**. The aforesaid texts are from true copies thereof from the DOL files.

See excerpts of the transcripts of the initial injunctive proceedings, held in the District Court on April 3rd and 8th 1998, App. T, at 82-a through 83-a.

Finally, the issue of whether members of a local union who have been expelled (and whose expulsions are spurious), should be accorded putative rights of membership and/or the protections of the Bill of Rights of Members of Labor Organizations under Title I of the LMRDA during the pendency of their internal appeal of their expulsions before the parent labor organization's higher tribunals. This is a matter of first impression for this Court and of exceptional national importance and application for the fostering and preservation of union democracy.

ARGUMENT 1

The per capita tax increases levied by the International Union upon its sister Local Union affiliate, which increases are passed along by that Local Union and directly charged to its members in the guise of Local Union dues increases, are unlawful under Section 101(a)(3)(A) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411 (a)(3)(A).

Virtually all of the reported case law on the subject supports the **Brodskys**' position on the subject:

> ...[A] "per capita tax"...was not intended by Congress to fall within the category of an increase of dues. A true "per capita tax" is one which is levied by a parent labor organization upon a *local* union with which it is affiliated. It is not a tax levied by a parent or a coordinated union directly upon the *members* of its affiliated locals. It is paid to the parent body or authorized coordinated union from the dues collected by the local from its members and generally related to the numerical strength of the local. But it is not an additional sum charged directly to the member and it is not used as subterfuge to increase dues (citations omitted)... The assessment does not fall within the definition of a true "per capita tax"... [T]he term is simply another label for dues which

> falls within the proscription of Section 101(a)(3) [of the LMRDA, 29 U.S.C. § 411(a)(3)].

King v. Randazzo, 234 F.Supp. 388, 394 (E.D.N.Y.1964), *aff'd* 346 F.2d 307 (2d Cir.1965)(emphasis original).

The District Court in *King* formulated a "financial burden test" as a method of distinguishing between "true" per capita taxes and disguised dues increases:

> Strictly speaking, the word "increase", as used in connection with the dues, means an enlargement or augmentation of the present dues as distinguished from the imposition of a new type of assessment by a different or affiliated organization. But the effect of this assessment, as far as the members of the Local are concerned... is an addition to the present dues paid by them. Whether there has been an increase in dues must be determined not by who imposed the exaction but by the nature of the imposition and the direct effect upon the financial burden of the individual members...

King, 234 F.Supp. at 394.

In this controversy, it is undisputed that, irrespective of whether the **International Union** chose to levy an increased per capita tax on its sister affiliates, the dollar amount of that per capita tax was directly passed along by its **Local Union** affiliate to its members *in the form of a dues increase*, i.e. the dollar amount of the quarterly dues payable by the members of the **Local Union** was *altered*. Therefore, giving words their plain meaning, the **International Union**'s imposition of its additional per capita had an effect upon the financial burdens of the individual members of the **Local Union**.

The **Respondents** blurred the distinction by arguing that the **International Union**'s raising of its per-capita tax was a "dues increase" exempt under § 101(a)(3)(B) of the LMRDA, 29 U.S.C.

§ 411(a)(3)(B) because no secret vote was required. Their (and the lower Courts') reliance upon two cases, *Mori v. Int'l Bhd. of Boilermakers*, 653 F.2d 1279 (9th Cir. 1981) and *Ranes. v. Office Employees Int'l Union, Local No. 28*, 317 F.2d 915 (7th Cir.1963), to support their argument (and the lower Courts' decisions) was misplaced.[24]

For one thing, *Mori*'s holding was a minority holding in the Circuit Courts and contrary to the decisions of the Second Circuit. For another thing, three months after the decision, this Honorable Court stayed its enforcement in light of the fact that the challenging union members had a reasonable probability of success on the merits and the balance of equities weighed heavily in their favor. This Court also noted the contrariness of *Mori* to other decisions, 454 U.S. 1301, 102, S.Ct. 1046, 70 L.Ed.2d 370 (1981). Though this Court ultimately denied certiorari in *Mori*, 454 U.S. 1147, 102 S.Ct. 1011, 71 L.Ed.2d 301 (1982), the inconsistency of the holdings of the several Circuit lingers.

Furthermore, the Second Circuit in *Seybert v. Lowen*, 623 F.2d 780, 783 (2d Cir.1980). limited the utility of *Ranes* in light of *King*, where the court "attempted to formulate an analysis that would separate 'true' per capita taxes from devices that, although labeled as 'per-capita taxes' actually were disguised dues increases which labor organizations sought to impose on their members without the necessity of first complying with the procedures mandated by 29 U.S.C. § 411 (a)(3)", *Id.*, at 784, which, of course, describes the case at bar.[25]

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[24] The District Court below relied exclusively upon and adopted the **Respondents**' argument in toto in its Opinion; and the Circuit Court affirmed it in its Summary Order.

[25] Unlike *Seybert*, where the parent International's imposition of its additional per capita "had no effect whatsoever upon the financial burdens of the individual members of the [sister local affiliate]", at 785, in *Brodsky*, where the **International Union** chose to levy a per-capita tax increase *and* the **Local Union** passed it along as a *dues increase* even though the vast majority of its members met the **International Union**'s minimum dues requirements, the dollar amount of the dues payable by its members was altered. Concluded the Court in *Seybert*: "The fact that compliance with the relevant provisions of 29 U.S.C. § 411 (a)(3) is a prerequisite for the imposition of any increase in the 'rates of dues' payable directly by individual union members insures that such persons will retain a

ARGUMENT 2

The "percentage dues" that has been uniformly levied each quarter for thirteen years by the Local Union upon the basic weekly earnings of its affected members, pursuant to the dues provisions of its Constitution and for the purpose of meeting its general and current financial obligations, are "periodic dues", not "work assessments", as those terms are employed in the labor law context.

The **Petitioners** submit that **Short**'s blanket refashioning of the percentage dues component of the **Local Union**'s quarterly dues as a "*work assessment*" was a calculated and deliberate obfuscation and is without merit as a matter of law; and that **Short** purposefully left the per capita tax "pass-along" controversy unaddressed so as to conceal the subterfuge of the **Local Respondents**[26], which the following case-law unmasks.

In *NLRB v. Food Fair Stores, Inc.*, 307 F.2d 3 (3d Cir.1962), the Court clarified the difference between "periodic dues" and "assessments":

> The term "periodic dues" in the usual and ordinary sense means the regular payments imposed for the benefits to be derived from membership to be made at fixed intervals for the maintenance of the organization. An assessment, on the other hand, is a charge levied on each member in the nature of a tax or some other burden for a special purpose, *not* having the character of being susceptible of anticipation as a regularly recurring obligation as in the case of "periodic dues".

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significant degree of control over the 'cost' of their union membership", *id.* Ironically, the **Brodskys**' refusal to pay the per-capita tax "pass-alongs", which clearly fall within the proscription of 29 U.S.C. § 411 (a)(3) "cost" them their union membership.

[26] The **Local Union**, **Deitch**, **Goldberg** and **D'Inzillo**.

Id., at 11 (emphasis supplied).[27]

In *Schwartz v. Associated Musicians of Greater New York, Local 802*, 340 F.2d 228 (2d Cir.1964), the Second Circuit held that a local musicians' tax of one-and-one-half-percent (1½%) imposed upon sidemen on all engagements was within the statutory term "membership dues" as used in § 302 of the LMRA, 29 U.S.C. § 186. The **Local Union**'s dues percentage levy is analogous to the aforementioned tax for it is a direct tax by the **Local Union** upon all motion picture projectionists employed in movie theatres. "That payment was contingent upon employment did not mean that the tax was an irregular assessment that could not qualify as dues", *Schwartz*, at 234.

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[27] *Food Fair* also noted that "[i]t is the position of the [Labor] Board that the Union may not, under the [National Labor Relations] Act, enforce the payment of...an assessment under pain of the [employees'] discharge." Id., at 16. In support of their position, the Court cited cases where the Board ordered the employer to cease and desist from threatening to discharge or otherwise discriminate against any employees if they do not pay assessments and also ordered the union to cease and desist from attempting to cause the employer to discharge or otherwise discriminate against any employees if they do not pay assessments to the union.

From July 1997, when the **Local Union** first threatened expulsion to nearly fifteen (15) months after the **Petitioners** were expelled therefrom (on or about November 1997), the **Local Union** continually sought to hold the **Brodskys** to what it regarded as their dues obligations under its union security agreement without giving the **Petitioners** any notice whatsoever pursuant to *Communications Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988) ("*Beck* notice"). When the **Local Union** ultimately presented the **Brodskys** with its *Beck* notice (February 1999), it informed them of their immediate discharge from their respective employment unless they paid all "outstanding dues" or a service fee. Such "outstanding dues" incorporated what **Short** and the **International Union** redefined as an "assessment". This would seem to run contrary to the holding in *Food Fair, supra.* Nevertheless to avert such discharges the **Petitioners** agreed to tender such monies, provided such monies were put in a special escrow account during the pendency of this controversy. Since that time, the **Brodskys** have tendered the controverted amounts and the **Local Union** has accepted such monies and has purportedly so deposited them.

In *Local 409, I.A.T.S.E.*, 140 NLRB 759 (1963), *a sister projectionist local* of the **Local Union** levied one-and-one-half percent (1½%) of its members' gross income per month (in addition to a fixed sum of $6.75 per quarter), provided the members were "working in the trade", i.e. as motion picture projectionists, operators and sound technicians. Although the amount paid varied with a member's income and with his employment status, the Board concluded that the levy was "periodic dues". Said the administrative law judge:

> It seems...plain to me that "periodic dues" uniformly levied for the purpose of meeting the general and current financial obligations of a union do not become assessments merely because the membership, officers and attorney refer to them as "assessments" or "*working assessments*"...
>
> Periodicity, regularity, uniformity and generality of use of financial obligations imposed upon members by a union should...be determinative of the question as to whether a money levy is "periodic dues"...
>
> In the instant case, the percentage levy is and has been regular and periodic. Further, the percentage levy is uniform. The percentage levy goes into the same account and is expended for the same general purposes as the $6.75 [in Local 409, and the $30 in **Local Union** 306].
>
> I find that the percentage levy, at all times material, has been "*periodic dues*"...and *not* an assessment.

Id., at 764 (emphasis supplied).

The District court ignored the above case-law and instead adopted the **Respondents** counsel's artificially created chasm between sections of Article 19 of the **International Union**'s

Constitution dealing with quarterly dues (Section 14) and assessments based on "percentage of earnings" (Section 26)[28] to require the **Local Union**'s members "to pay quarterly dues in addition to percentage dues".[29]

An examination of Section 26 reveals that the chasm is passable. The section simply attempts to resolve the financial obligations of members of more than one of the sister affiliates of the **International Union** who may be charged a "given percentage of their earnings over and above the monthly dues"[30] by one affiliate or by both which its Constitution broadly terms a "work assessment". The section is *not* incongruent with the **Brodskys'** contentions, nor is it inharmonious to the case law discussed above. A bona fide "work assessment" *is* distinguishable from quarterly or monthly dues. A *dues percentage*, however, is but a component of the basic quarterly or monthly dues. *Local 409 v. IATSE, supra,* instructed the very Respondent **International Union** as to the distinction between the two, which it, its co-**Respondents**, their counsel, and the lower Courts have disregarded.

Nevertheless, the **Respondents** argued – and the lower Courts seemingly agreed - that the only reasonable interpretation of Article VII, as amended, of the **Local Union**'s constitution, as amended is that the provision imposes quarterly dues of $30 *plus* an *assessment* of now four percent on its working members, i.e., that the operative function of the word "plus" is to segregate the two components. One need only further examine the **Local Union**'s own documents to see how this argument is *un*reasonable:

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[28] *See* IC, Article Nineteen ("Powers and Duties of Local Unions"), Section 26 ("Additional Revenues"), App. D, at 20-a and 21-a.

[29] *See* District Court's Opinion, App. B, at 10-a, first full paragraph.

[30] Note that the **Local Union** levies *quarterly* dues.

- The rash of *dues* amendment referenda reveals that the **Local Union** sought to raise the *"percentage dues" not "assessments"*.[31]

- The **Local Union** and **Deitch**'s letter to the membership, dated January 5, 1998, informed them that the "quarterly dues consists of $37 *plus* 3.5% of straight time earnings...Remember to provide your [pay] stubs with your *dues calculations*" (emphasis added).[32]

- The **Local Union**'s Executive Board's letter to the membership, dated March 4, 1998, which urged members to vote in favor of "an amendment to increase *dues* by ½% bringing the *total dues* to *4% plus the $37 per capita dues*" (emphasis added).[33]

- The **Local Union** and **Deitch**'s letter to the membership, dated May 7, 1998, fresh from the **Local Respondents**' stolen victory in the eighth dues amendment "initiative",

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[31] *See* footnote "21", p. 6, *supra*.

[32] ***See*** App. R, at 80-a. Query: what is there to "*calculate*" as part of the "*dues* calculations" but the *percentage dues* component of the quarterly dues?

[33] *See* App. S, at 81-a. Note how the use of the word "*total*" serves to *integrate* the two *dues* components within the quarterly dues. Also note how the dues percentage component of the quarterly dues *precedes* the basic dues component (which under LC, Article VII, § 1, as amended, is *$30*, *not* $37; *see* App. E, at 24-a). The reversal of the configuration of the two components in relation to the word "*plus*" serves to indicate that the operative function of "*plus*" is *not* to segregate the *dues percentage* component (now 4%) of the quarterly dues from the basic dues component of $30, but to *integrate* it *within* the quarterly dues.

The **Local Union** here debuts another wordplay: the *basic dues component* of the quarterly dues now becomes the "*per capita* dues". This linkage is without merit. Aside from the present proximity between the per capita tax ($35) and the basic dues component of the **Local Union**'s quarterly dues ($30), before LC, Article VII, Section 1 was amended in 1987, the quarterly dues exacted upon the **Local Union**'s members were pro-rated based upon their weekly earnings, ranging from a $30 minimum to a $60 maximum. At that time, the **International Union**'s per capita tax was $12 and the minimum quarterly dues imposed upon its sister local affiliates was $15. Thus historically, there was no correlation between the per capita tax and the mandatory minimum quarterly dues amount.

"reminded [them] that the *new 4% dues* must be paid" (emphasis added).[34]

- The **Local Union** and **Deitch**'s recent (1996) Labor Organization Annual Report (LM-2) filed with the Department of Labor[35] reveals a representation of *dues* as "$32 plus 3½% earning" [sic] on the first page. In Statement B, on the second page, "[$]561,778" is the amount listed next to the cash receipts obtained from "dues", which can only be attributed by the aggregate of the basic dues component *plus* the percentage dues for a membership of six hundred and fifty people. There is *no* amount listed next to cash receipts obtained from "assessments". This last fact alone etches in bas-relief what the **Petitioners** submit is the *integral* function of the word "plus" in Article VII, § 1, as amended of the **Local Union**'s Constitution.

ARGUMENT 3

An open vote based on a majority of those attending and voting at the Local Union's membership meeting on a Resolution presented by said Union's administration to increase the levy of "percentage dues" from the "basic weekly earnings", as provided by the Local Union's Constitution, to encompass overtime hours at straight-time rates earned by the affected members, which members were given insufficient notice of said Resolution as provided in the Local Union's By-Laws (one month's notice as required by said By-Laws, as opposed to less than two week's notice given by the Local Union), were in violation of (1) the Local Union's Constitution, which requires two readings of any amendments or alterations of said Constitution at two consecutive union membership meetings and a vote of 2/3 of the members voting valid [secret]

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[34] This letter is reproduced in pertinent part in App. U, at 84-a. The use of the word "total" serves to *integrate* the two *dues* components within the quarterly dues.

[35] The pertinent information in this LM-2 is reproduced in App. V, at 85-a.

ballots; and/or (2) Section 101(a)(3)(A) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411 (a)(3)(A).

Firstly, the **Local Union**'s Resolution was clearly deficient in its notice by not conforming with the 30-day notice requirement[36]; the **Local Union** and **Deitch** gave *less than 2-weeks'* notice to the membership.

Secondly, the Resolution went *beyond* the **Local Union**'s constitutional parameters of the "basic weekly earnings" to levy the percentage dues on all the "straight-time" pay of each and every member who is employed as a theatre projectionist to include the *overtime* at straight-time rates earned by them. Under the collective bargaining agreements ("CBA") then and presently in effect, any overtime earned from 8 a.m. until 2 a.m. is at straight-time rates. Given that normal operating hours of theatres are generally from noon or 1 p.m. until midnight, this levy upon straight-time overtime is beyond the hours on which pension and welfare benefits are paid by the employers, which constitute the "basic weekly earnings". For the CBAs (and there are three of them), cannot dictate nor control the exaction of dues. The CBAs govern the relationship and obligations between employees and employers. The **Local Union**'s Constitution, on the other hand, governs the relationship between the Union and its members. This provision in the Resolution was a Trojan Horse that provided a windfall dues increase for the **Local Union** while circumventing the constitutional amendment process and statutory requirement for such an increase.

Thirdly, the Resolution was "passed" by a by voice-vote (*there was no secret ballot*) of a majority of the members attending the **Local Union**'s general membership meeting of April 1996 (*there were no two readings nor a secret mail ballot which required 2/3 vote of all its members per the requisites of a constitutional amendment).*[37]

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[36] *See* footnote "5", p. 1, *supra*, and the date of the notice (March 29th) and of the meeting (April 10th) in App. F, at 25-a

[37] *See* LC, Article XI, Sections 2 & 3, App. E, at 24-a.

Fourthly, aside from the above violations, the per capita tax "pass-alongs" and the levies on overtime at straight-time rates were also *unlawful* because Section 101(a)(3)(A) of the LMRDA, 29 U.S.C. § 411(a)(3)(A) requires a *secret ballot* vote *with reasonable notice given*. Assuming that the **Local Union**'s constitutional notice be "reasonable", *both* of these requisites were not met by the **Local Union** or **Deitch**.

Fifthly, the above egregious violations of the Constitution, By-Law and federal law were further aggravated when, a day after the Resolution "passed", **Deitch** issued what he called "clarifications" which offered three computations of the straight-time hours based on the three CBAs, in total disregard of the language and intent of the **Local Union**'s Constitution.[38] Whatmore, **Deitch** first announced in his "clarifications" that the Dues Bills would thenceforth be discontinued. Thus the projectionists would be responsible for assessing themselves or electing Dues Check-Off, as advised by **Deitch**, from employers who did not distinguish on their pay-stubs between overtime at straight-time rates and basic weekly wages payable, of course, at straight time. The windfall was thus assured.

All of this was completely ignored by **Short**, the **International Union**, in the rulings of its higher tribunals, by the District Court when it found the **Local** and **International Unions**' interpretation of their constitutions "reasonable"[39] and when it

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[38] Excerpts from **Deitch**'s "clarifications" are reproduced in App. W, at 86-a and 87-a.

[39] Thus ignoring a standard of review cited by the **Petitioners** in *Reich v. I.A.T.S.E.* [the very **International Union**]., 32 F.3d 512, 515-516 (11th Cir.1994):

> In interpreting a labor union's constitution, both the union and the court should follow the settled rules of statutory construction. One of these rules is that the constitution must, if possible, be construed in such fashion that every word has some operative effect...We reject the [**International Union**]'s interpretation as unreasonable.

It is baffling how **Short** can "see" invisible constitutional prohibitions against what he deems as "work assessments" as a factor in determining quarterly

found no violation of federal law, and by the Circuit Court in its summary affirmance.

ARGUMENT 4

The Petitioners were improperly expelled from the Local and International Unions even though they tendered their "proper" union dues pursuant to both Unions' respective Constitutions.

The District Court erred when it found that the **Brodskys** "tendered their $37 quarterly dues only after they were expelled".[40]

From the inception of this controversy, the **Petitioners** paid their "proper" union dues[41] *each quarter* of $30 plus 3½% of their respective basic weekly earnings, which was $336.21 from the undersigned, and $317.41 from his brother co-**Petitioner**. The **Brodskys**' respective tender were significantly more than $37. When **Short** refashioned the **Local Union**'s dues as "$37", the **Brodskys** complied with his ruling as the law of the International,[42] though they appealed his ruling as unreasonable and harmful to the **Local Union**'s fiscal health. Throughout this controversy, the **Petitioners** have respected and abided the provisions of the **Local** and **International** Constitutions.

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dues, but can be blind to the actual provisions of (1) the **Local Union**'s Constitution that clearly incorporate the "percentage dues" as a component of the quarterly dues *(see* footnote "2", p. 1, *supra)*, and (2) the **International Union**'s Constitution that clearly define the per capita tax as a direct levy upon the affiliated local unions – *not* its members (*see* footnote "1", id.).

[40] *See* App. B, at 12-a, last paragraph. The Court's finding buttressed its rationale for upholding the **Brodskys**' expulsion and its refusal to accord them Title I rights and protections.

[41] *See* footnote "7", p. 2, *supra.*

[42] *See* footnote "12", p. 3, *supra.*

ARGUMENT 5

The Petitioners should have been accorded putative rights of membership and/or the protections of Section 101 et seq. of the Bill of Rights of Members of Labor Organizations, Title I of LMRDA, 29 U.S.C. § 411 et seq., during the pendency of their internal appeal of their expulsions before the International Union's higher tribunals.

The **Respondents** made a mockery of the Bill of Rights afforded under Title I of the LMRDA when they put forth the Orwellian argument that the **Brodskys** were not beneficiaries of those Rights and could not invoke the protection of the Court thereunder because the **Local Union** - and ultimately **International Union** - stripped them of the status of membership. The District Court casually adopted the **Respondents**' stance, and the Circuit Court just as casually affirmed it.

By so doing the District Court misapplied the fact pattern and this Court's holding in *Phelan v. Local 305*, 973 F.2d 1050 (2d Cir.1992) to the instant case. In *Phelan*, the Plaintiffs were not full members of Local 305, but "travelers", i.e. individuals who seek to work outside the jurisdiction of their local union.

> These individuals...retain their membership in their "home" local, to which they continue to pay dues... Although the traveler may attend meetings at the sister local, he is entitled to vote only at his "home" local. Plaintiffs were members of Local 76 who only traveled to Local 305's geographic jurisdiction to obtain work.
>
> Different procedures govern the process by which a member of one union may "transfer" to a different local... If a member of a local utilizes this process, that member loses membership rights in the first local and becomes a member in the second... Plaintiffs in this case did not utilize this "transfer" procedure, and in no way sought more than "travelers" rights in Local 305... We

> conclude therefore that Plaintiffs were not members of Local 305...

Phelan, 973 F.2d at 1057.

In contradistinction, the **Petitioners** were members of **Local Union** 306 ab initio. They paid their lawful dues as defined by the plain language of **Local Union** 306's Constitution and were subsequently expelled for their refusal to pay improper "pass-alongs" of the parent **International Union**'s per capita tax increase which the **Local Union** unlawfully levied upon its members as a dues increase. The facts of the two cases could not be more dissimilar.

Phelan however recited the case of *Basilicato v. I.A.T.S.E.*, 479 F.Supp. 1232, 1242 (D.Conn.1979), *aff'd.* 628 F.2d 1344 (2d Cir.1980) [43], which held that "[t]he definition of 'member' within [§ 3 (o) of the LMRDA,] 29 U.S.C. § 402(o) is not limited to those members who are recognized by the organization". With that the Court continued:

> We therefore look to whether an individual has satisfied or sought to satisfy the requirements of the union at issue to determine whether he is a "member" for LMRDA purposes.

Phelan, 973 F.2d at 1057.

This Honorable Court need only examine the plain language of the **Local** and **International Unions**' respective Constitutions[44] to answer the above affirmatively in the **Brodskys**' favor.

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[43] Yet another case involving the **International Union**. *Also see Local 409 v. I.A.T.S.E.*, 140 NLRB 759 (1963), p. 13, *supra*, and *Reich v. I.A.T.S.E.*, F.3d 512, 515-516 (11th Cir.1994), p. 18, *supra*.

[44] *See* footnotes "1" & "2", p. 1, *supra*.

The District Court relied upon the Second Circuit's decision in *Members for a Better Union v. Bevona*, 152 F.3d 58 (2d Cir.1998) to assert that "to the extent that [the **Petitioners**]...fail to allege...[the right to participate and vote at meetings where other members were permitted] those claims must be dismissed for lack of subject matter jurisdiction".[45]

However, *Brodsky* can be readily distinguished from *Bevona* because the **Brodskys** *did* allege in their Complaint they were the subjects of discrimination and were denied the right to vote that the Union granted to other members.[46]

Moreover, even if there may remain a question of an absence of discrimination against the voting rights of a specific union member or group of members – as when *all* of the voting members rights were abrogated by **D'Inzillo** when he invalidated the amendment put forth by the undersigned and passed by the voting members at the November 1996 membership meeting, the **Petitioners** submit that that scenario falls under the exception formulated by the Second Circuit in *Sheldon v. O'Callaghan*, 497 F.2d 1276 (2d Cir.1974), where it recognized that union officers "had a duty to conduct a fair [vote]", *id.*, at 1282, and that such abrogation can "fairly be deemed a denial of the [members'] equal right to vote...", *id.*, at 1283, n. 9. Such a direct attack on the right to vote should be deemed by this Court as a violation of the LMRDA. *Also see Bunz v. Moving Picture Machine Operators Protective Union Local 224*, 567 F.2d 1117 (D.C.Cir.1977), where a brother union projectionist argued that his sister union denied him the equal right to vote under § 101 (a)(1) of the LMRDA by issuing a "patently frivolous" interpretation of its constitution which raised the percentage of votes necessary to defeat an assessment. The Court held that it had jurisdiction and that the plaintiff was "deprived of his equal right to cast a *meaningful* vote", *id.*, at 1122 (emphasis added) and was therefore discriminated against under the LMRDA.

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[45] *See* App. B, at 14-a, top of the page.

[46] Pertinent excerpts from the **Petitioners**' Verified Complaint are reproduced in App. X, at 88-a through 91-a.

Notwithstanding the above, the **Brodskys** should have been accorded putative rights of membership to challenge their expulsion as a matter of public policy. They certainly had standing to appeal their expulsion before **Short** and **International Union** as *brother members* – even as late as June 1998, subsequent to their commencement of this action. Therefore, for them to be denied the judicial right to contest the lawfulness of their expulsion would create a bad precedent in total contradiction to the intendment of Title I of the LMRDA.

Indeed, the District Court's Opinion and the Second Circuit's affirmance in *Brodsky* provide entrenched union administrations with a sure mechanism to quash dissent by expelling "disagreeable" members, rather than to exact a lesser "discipline" to end run their judicial recourse. A case in point: If Mr. Caputo and Co. expelled Mr. Salzhandler instead of fining him for his purported defamatory speech, under *Brodsky*, Mr. Salzhandler would not have a viable claim under the LMRDA to assert jurisdiction of the courts, and the seminal case of *Salzhandler v. Caputo*, 316 F.2d 445 (2d Cir.1963), indeed the bell-weather case of the LMRDA and almost universally cited in the several Circuit Courts, would be a phantasmagoria.

ARGUMENT 6

Short, who as the International Union's President, submitted a pre-dated "clarification" of his Determination of the Petitioners' internal appeal thereof, when the International Union's Constitution affords no procedure for such "clarification", and Proscia, who as the International Union's General Secretary-Treasurer, proceeded to frame such "clarification" as the basis of the Petitioners' already-submitted appeal to the International Union's higher tribunal, acted *ultra vires* of their respective constitutional authorities and/or in bad faith and/or in violation of Section 301(a) of the Labor Management Reporting Act, 29 U.S.C. § 185(a).

Section 301(a) of the LMRA, 29 U.S.C. § 185(a), extends to suits on union constitutions brought by individual union

members. *Wooddell v. Int'l Bhd. of Elec. Workers, Local 74*, 502 U.S. 93, 112 S.Ct. 494, 116 L.Ed.2d 419 (1991). *Shea v. McCarthy*, 953 F.2d 29 (2d Cir.1992) holds that "[§] 301(a) authorizes similar suits against union officials who perpetrate the constitutional violations", *Id.*, at 31.

Historically in the Second Circuit's jurisdiction, an international union could not be found liable merely because it had affirmed an order of expulsion by its sister local affiliate. There had to be bad faith or fraud. *People ex rel. Solomon v. Bhd. of Painters, Decorators & Paperhangers*, 218 N.Y. 115 (1916). Seventy years later, the Circuit Court in *Rodonich v. House Wreckers Union Local 95*, 817 F.2d 967 (1987) "s[aw] little difference between the 'bad/faith' fraud formulation espoused by [the prior recited cases] and the 'ratification with full knowledge' standard which [it] adopt[ed in *Rodonich*]". The **Brodskys** submit that the acts and omissions of the **International Respondents** meet the criteria for *both* formulations/standards.

The **Petitioners** demonstrated in their rebuttal to **Short**, how his pre-dated correspondence, though designed "to set the record straight" failed in its purported intendment both procedurally and substantively and was *ultra vires* of his powers under the **International Union**'s Constitution.[47]

The **Brodskys** contend that **Short**, and by and through him the **International Union**, went beyond "mere affirmance" of their co-**Respondents'** acts and omissions. His use of the term of "*work assessment*" was designed primarily as a "subterfuge" to justify the "pass-along" of the per capita tax upon an unwitting membership. *See King, supra*, at 234. Whatmore, **Short**'s co-participant liability in his co-**Respondents**' duplicitous efforts is further evidenced by his pre-dated coincidental offering[48]; and

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[47] *See* footnote "16", p. 4, *supra*.

[48] Though the District Court below regarded **Short**'s pre-dated letter (App. K) as "merely a confirmatory notice written as a courtesy which informed...[the **Brodskys**] that ...[he] had received the[ir] appeals", App. B, at 15-a, top of the page, a comparison of said letter with **Short**'s Determination (App. H) reveals that **Short** clearly attempted to augment his Determination, a power that he does not have under the **International Union**'s Constitution. It is more than

Proscia, having received notice from the **Petitioners** of the letter's procedural and substantive deficiencies and constitutional infirmity, went ahead and not only made it part of the appellate record but attempted to cloak it with legitimacy as the basis of the **Brodskys**' appeal to the **International Union**'s GEB. Standing by themselves, the letters should implicate the **International Respondents**[49] in this litigation and should have sustained all the Counts put forth against them.[50]

ARGUMENT 7

The District Court committed reversible error - and by extension the Circuit Court in its summary affirmance of the District's Court's Order - when it disregarded the oversight safeguards provided in the Local Union's Constitution of an independent tabulation by a ballot committee of the ballots of a dues increase referendum conducted by said Union, and instead ordered two high officials of said Union, who happened to be the very sponsors of said referendum, to tabulate those ballots behind closed doors without any oversight whatsoever, thus tainting the resultant passage of the dues increase which had failed on seven prior occasions.

At the outset of this litigation the **Local Respondents** were in the midst of their *eighth dues* increase amendment

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happenstance that both the **Petitioners** and **Gross** separately and independently received copies of each and every correspondence from **Short** and **Proscia** during the course of their internal appeal, *but for* **Short**'s pre-dated letter, which none of them received.

[49] The **International Union**, **Short** and **Proscia**.

[50] *See* IC, Article Twenty-Three ("Responsibility of International"), Paragraph "a", App. D, at 21-a and 22-a. The **Brodskys** submit that **Short**'s Determination and so-called "clarification" thereof by his pre-dated letter and the GEB and Convention's subsequent taciturn though express and incontrovertible upholding of **Short**'s Determination and proffered rationale, made the **International Union** "liable and responsible" under the aforesaid section. Moreover, the activities, actions or omissions in question meet the *Rodonich* criteria holding the **International Respondents** liable in this controversy.

referendum (April 3, 1998). Their seven prior attempts to increase the *percentage dues* were voted down by the membership of the **Local Union**.[51] The last referendum "succeeded" primarily because the **Respondents**' counsel misled the District Court at the initial injunctive proceeding on April 3, 1998 into believing that it was the protocol that two (2) union officers tabulate the ballots[52] - **Goldberg** and **Deitch**, *the very sponsors of the dues increase "initiatives"* - rather than the constitutional safeguards of an independent tabulation.[53] This outrageous duplicity made suspect the very secrecy of the ballots, tainted the tabulation of the votes and cast a penumbra of injury upon the membership-at-large. Wherefore, the **Petitioners** prayed that the results of the referendum, suspect and tainted as they are, be declared null and void, and that the one-half percent (½%) *percentage dues* increase levied on the membership of the **Local Union** since the referendum, by and through **Deitch**, be refunded or credited in toto to the membership. Their prayers went unheeded by the Courts below.

CONCLUSION

The **Brodskys** gave the **Respondents** every opportunity to cure their prior mistakes and malfeasances before they took judicial recourse. Such recourse was not pursued frivolously, but prudently. It was a wrenching decision for them to take this prohibitive course. They did so, however, because they had suffered egregious injuries in succession: Their speech and participation in debate at union meetings were thoroughly quashed. They were completely disenfranchised from the dues amendment referenda. And, finally, they were ignobly expelled.[54]

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[51] March 1, 1995, May 20, 1995, November 8, 1995, December 1, 1995, January 27, 1997, March 31, 1997 and April 19, 1997.

[52] *See* App. T, at 82-a and 83-a.

[53] *See* footnote "23", p. 7, *supra*.

[54] The **Petitioners** initiated this lawsuit on April 1, 1998. Only a week before (March 21, 1998) they received the Determination of the **International Union**'s GEB that it had upheld **Short**'s Determination without any reasoning proffered.

And what for? Because they paid their *proper* and lawful dues and they insisted on the integrity of the **Local** and **International Unions**' Constitutions.

Moreover, the **Petitioners**' redress was met with reticence, and the acts and omissions of the **Local Respondents** were whitewashed and subsequently ratified without an explanation by the **International Respondents** – and affirmed by the dispositions of the Courts below.

Whatmore, by subterfuge, the **Local Respondents**, by and through their counsel, abused judicial intervention and consequently obtained a dues increase previously denied them seven times.

If justice is to prevail in this controversy and the aforesaid Bill of Rights not be rendered hollow, the **Brodskys** pray that this Honorable Court affirm their Petition for Certiorari.

Respectfully submitted,

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Petitioner pro se and
Counsel to Co-Petitioner

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In the weeks before that, they were, for the *first* time (1) not sent monthly member notices (March 4th), (2) disallowed participation at the **Local Union**'s membership meeting (March 5th), (3) threatened with discharge from their respective employment (March 6th), and (4) disenfranchised by not even being sent ballots for the subject referendum (mid-March). The undersigned was even forcibly ejected from the **Local Union**'s membership meeting on the very day of the second injunctive proceeding (April 8th).

APPENDIX A

United States Court of Appeals
For the Second Circuit

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OF ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 8 day of February two thousand.

PRESENT: Pierre N. Leval,
Fred I. Parker,
Robert A. Katzman,
Circuit Judges.

MERRICK J. BRODSKY & HOWARD K. BRODSKY,

Plaintiffs – Counter-Defendants –Appellants,

- against -

UNION LOCAL 306, MOTION PICTURE PROJECTIONISTS, VIDEO TECHNICIANS AND ALLIED CRAFTS, I.A.T.S.E., JOEL DEITCH, Individually, and as Secretary-Treasurer of Union Local 306, MICHAEL GOLDBERG, Individually and as Business

Representative of Union Local 306, STEVE D'INZILLO, Individually, and as President of Union Local 306,

Defendants – Counter-Claimants – Appellees,

and

INTERNATIONAL ALLIANCE OF THEATRICAL AND STAGE EMPLOYEES, AFL-CIO, THOMAS C. SHORT, Individually and as President of the International Alliance, and MICHAEL W. PROSCIA, Individually, and as General Secretary-Treasurer of the International Alliance,

Defendants – Appellees.

APPEARING FOR PLAINTIFFS-APPELLANTS:
Merrick J. Brodsky
Brooklyn, NY.

APPEARING FOR DEFENDANTS-APPELLEES:
Sara A. Corello
Spivak, Lipton, Watanabe,
Spivak & Moss LLP
New York, NY.

Appeal from the United States District Court for the Southern District of New York (Baer, J.)

Plaintiffs, Merrick J. and Howard K. Brodsky, appeal the order of the United States District Court for the Southern District granting summary judgment to the defendants.

We affirm for substantially the reasons given by the district court.

The appellees' motion for sanctions is denied.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the District Court is **AFFIRMED**.

FOR THE COURT:
KAREN GREVE MILTON, ACTING CLERK
By: /s/ Lucille Carr, Deputy Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERRICK J. BRODSKY and HOWARD K. BRODSKY,

Plaintiffs,

- against -

UNION LOCAL 306, MOTION PICTURE PROJECTIONISTS, VIDEO TECHNICIANS AND ALLIED CRAFTS, I.A.T.S.E., JOEL DEITCH, Individually, as Secretary-Treasurer of Union Local 306, STEVE D'INZILLO, Individually, as President of Union Local 306, MICHAEL GOLDBERG, Individually, as Business Representative of Union Local 306, INTERNATIONAL ALLIANCE OF THEATRICAL AND STAGE EMPLOYEES, AFL-CIO, THOMAS C. SHORT, Individually, as President of the International Alliance and MICHAEL W. PROSCIA, Individually, as General Secretary-Treasurer of the International Alliance,

Defendants.

OPINION & ORDER
98 Civ. 2325 (HB)
February 23, 1999

BAER, District Judge: - This case stems at least on the face of the complaint from a dispute over an increase in Union Local 306's quarterly dues in January 1994 and a second increase in

January 1997. Plaintiffs are projectionists who formerly belonged to Union Local 306, refused to pay the increases, were suspended and eventually expelled. Plaintiffs commenced this action on April 1, 1998 and allege that the increases unlawfully sought to alter the dues structure of the union. Accordingly, they have brought this action against the Union Local 306 and the International Union as well as individual officers. Plaintiffs allege sixty violations of the constitutions in both entities, §301 of the Labor Management Relations Act, 29 U.S.C. §185 and §§101(a)(1), (2), (3)(A), (5) and 609 of the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. §411(a)(1), (2), (3)(A), (5) and 529. Plaintiffs previously sought two preliminary injunctions, both were denied.

Defendants Union Local 306, Motion Picture Projectionists, Video Technicians and Allied Crafts, I.A.T.S.E. ("Local 306" or the "Local"); Joel Deitch ("Deitch"); Michael Goldberg ("Goldberg"); Steve D'Inzillo ("D'Inzillo"); International Alliance of Theatrical and Stage Employees, Moving Picture Technicians, Artists, and Allied Crafts of the Unite States and Canada ("IATSE" or "International"); International President Thomas C. Short ("International President Short" or "Short"); and International General Secretary-Treasurer Michael W. Proscia ("Secretary-Treasurer Proscia" or "Proscia") now move pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment on all counts in the Verified Complaint, the Verified Amended Complaint and the Verified Supplemental Complaint. Plaintiffs cross-move for summary judgment against all the defendants. Since there are no genuine issues of material fact with respect to the claims brought in this action, the defendants' motion for summary judgment is GRANTED, the plaintiffs' cross-motion for summary judgment is DENIED and the complaint is DISMISSED.

II. *BACKGROUND*

The International Constitution requires each affiliated union to collect dues of not less than five dollars above the amount of the

per capita tax. More specifically, Article Nineteen, §14 of the International Constitution states the following:

> Section 14. Quarterly Dues.
>
> It shall be compulsory for each affiliated local union of the Alliance to collect from each individual member thereof, except retired members....quarterly dues of not less than Five Dollars ($5.00) over and above the amount of the per capita tax, causing the proper receipt stamps to be affixed to the dues book of the individual member as evidence of such payment.

Ex. A of Defs' Exs. In Opp. To Prelim. Inj. ("Defs' Ex. A) at 41-42, (IATSE 1995 Const., Art. 19, §14).

The International's conventions in 1993 and 1995 authorized the increase in the per capita tax by a majority vote of the delegates. In January 1994, the per capita tax increased from $28 to $30 and again in January 1997 to $32. Therefore, according to the International Constitution, all the International's affiliated locals were required to charge quarterly dues of not less than $35 from 1994 to 1997, and not less than $37 thereafter.

In November 1993, Local 306 informed its membership that quarterly dues would increase by $2 in January 1994 in order to adhere to the existing provision in the International Constitution. The Local's quarterly dues are to be paid by the third Wednesday following the close of the quarter. Dues must therefore be paid by the third Wednesday of January, April, July and October. *See* Ex. A.2 of Pls' Exs. In Supp. Of Prelim. Inj. ("Pls' Ex. A.2"). (Local 306 Membership Notice dated March 29, 1996). Members who fail to pay by that Wednesday are considered delinquent and suspended. See Pls' Ex. A.3 at 21. (Local Constitution, Art. VII, §§2-3) and 37 (Local By-Laws, §6). The plaintiffs refused to pay the increase. The Local explained to plaintiffs why the increase was necessary, and warned plaintiff that they would automatically be suspended and then expelled if the increases were not paid.

Nevertheless plaintiff refused to comply with the Local's requirements.

In May 1996, Local 306 informed plaintiffs that they had improperly paid $2 less than the required quarterly dues. Plaintiff objected to the Local's calculation of quarterly dues and continued to refuse to pay the $2 increase. By July 1996, plaintiffs had failed for two quarters and were thus automatically suspended under the Local's By-laws. *See* Pl's Ex. A.3 at 21 (Local Constitution, Art. VII, §§2-3) and 37 (Local By-laws, §6). In September 1996, Local 306 again wrote to plaintiffs informing them that they were delinquent in their dues. In October 1996, Defendant Deitch wrote to plaintiffs warning them that if they did not pay the $2 increase, Local 306 would automatically expel them under the International Constitution. *See* Pls' Ex. A. 14-B; Def's Ex. A at 49 (IATSE 1995 Const. Art. 21, §12).

In letters dated January 17, 1998, Local 306 again informed plaintiffs that they had not paid their required dues. The letters explained that the delegates at the International's convention in July 1995 had voted a $2 increase in the per capita tax effective January 1, 1997. Defendant Deitch wrote to plaintiffs to explain that the Local would have to take action to expel plaintiffs if they did not make efforts to pay the dues increase. Despite these efforts by the Union, plaintiff refused to pay the 1997 increase and continued to refuse to pay the 1994 increase in quarterly dues.

As a result of their failure to pay dues, plaintiffs were no longer members in good standing and were prevented from casting ballots in votes held in March and April 1997 on a proposal to increase the Local's percentage dues on earnings. In July 1997, plaintiffs appealed to the International President and challenged both increases. The International President denied plaintiffs' appeal. The International President found that the International Constitution required the Local to charge quarterly dues of $37, and directed the Local to comply with the International Constitution.

Pursuant to Art. 19, §12 of the International Constitution, Local 306 informed plaintiffs by certified mail to their respective

homes in letters dated September 2, 1997 that they would be expelled if they did not pay their delinquencies, plus a $500 reinstatement fee, within 10 days. Further, Local 306 again informed plaintiffs by letters dated October 17, 1997 that they would automatically be expelled if they did not pay their delinquencies by November 5, 1997. The plaintiffs were expelled shortly thereafter.

III. *DISCUSSION*

A. Summary Judgment Standard

Summary judgment should be granted when the record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The moving party "bears the initial burden of demonstrating the absence of a genuine issue of material fact" and "may discharge this burden by demonstrating that there is an absence of evidence to support the non-moving party's case on an issue which that party would have the burden of proof at trial." *Philips Credit Corp. v. Regent Health Group, Inc.*, 953 F.Supp. 482, 506 (S.D.N.Y. 1994); *aff'd*, 81 F.3d 1224 (2d Cir. 1996).

B. Dues Increases Did Not Violate the Local's or International's Constitutions.

"There is a well-established policy of avoiding judicial interference in union self-governance and internal affairs." *Mason Tenders Local Union 59 v. Laborers' International Union of North America, et al.*, 924 F.Supp. 528, 542 (S.D.N.Y.) (citing cases), *aff'd* 101 F.3d 686 (2d Cir. 1996). As stated by the Second Circuit:

> Courts have no special expertise in the operation of unions which would justify a broad power to interfere. The internal operations of unions are to be left to the officials chosen by the members to manage those operations except to the very limited instances expressly provided by the

> [LMRDA]... General supervision of union by the courts would not contribute to the betterment of the unions or their members or to the cause of labor management relations.

Gurton v. Arons, 339 F.2d 371,375 (2d Cir.1964) (internal quotations and citations omitted).

Courts have consistently held that a union's "interpretation of its own constitution is entitled to 'great deference' and will be upheld unless 'patently unreasonable.'" *Mason Tenders*, 924 F.Supp. at 543 (internal citations and quotations omitted). *See also Local 334 et al., v. United Assn Of Journeymen and Apprentices, et al.*, 669 F.2d 129 131 (3d Cir. 1982); *American Postal Workers Union, AFL-CIO, Headquarters Local 6885, et al. v. American Postal Workers Union, AFL-CIO, et al.*, 665 F.2d 1096, 1101 (D.C.Cir. 1981). A court may also override an interpretation that was made in bad faith. *See Schonfield v. Raftery*, 359 F.Supp. 388 (S.D.N.Y. 1973), *aff'd sub nom Fritsch v. District Council No. 9, Brotherhood of Painters*, 493 F.2d 1061 (2d Cir. 1974) Since the International Constitution is a contract between the International and its affiliated locals. *Shea v. McCarthy*, 853 F.2d 29, 31 (2d Cir. 1992), the International's and Local's interpretation of the International Constitution are entitled to the same deferential standard. Thus, while courts should ignore interpretations that are contrary to the plain meaning of contract language, "the Union's interpretation of its constitution and by-laws is...entitled to special weight. [Courts] will defer to the Union's interpretation of its governing documents unless that interpretation is patently unreasonable." *Sim, et al. v. New York Mailers' Union Number 6, et al.*, ---F.Ed---, 1999 WL 35058 at *4 (2d Cir. Jan 28, 1999). *See also Spellacy v. Airline Pilots Ass n-Int'l*, 156 F.3d 120, 127 (2d Cir. 1998).

The defendants contend that summary judgment is warranted because the primary issue is whether Article 19, §14 of the International Constitution required Local 306 to increase its flat quarterly dues in 1994 and again in 1997. They argue that the increases were necessary for Local 306 to comply with the International Constitution. According to the defendants, the relief

sought by the plaintiffs – a reduction in the quarterly dues charged by Local 306 – will put the Local in violation of Article 19, §14 of the International Constitution. Local 306 will have failed "to collect from each individual member" the dues required by the International Constitution. Defs' Ex. A at 41-42 (IATSE Const. Art. 19, §14). I agree.

The quarterly dues including the increases at issue are clearly mandated by the language of the International Constitution. The Constitution states that it is "compulsory" for the Local 306 to collect from its non-retired members the "quarterly dues of not less than Five Dollars ($5.00) over and above the amount of the per capita tax." Defs' Ex. A at 41-42 (IATSE 1995 Const. Art.19, §14). Since the dues increases were properly authorized by the International conventions in 1993 and 1995 and there is no evidence that the Local's interpretation was patently unreasonable or made in bad faith, it was necessary for the Local to implement such increases.

Plaintiffs contend that no dues increases were necessary in 1994 and 1997. However, the Local interpreted the International Constitution differently from plaintiffs. According to the Local's interpretation of Article 19, §26 of the International Constitution, the members of Local 306 were required to pay quarterly dues in addition to percentage dues and "[i]t is the union's interpretation of the constitution that the courts must evaluate, and not the plaintiffs' interpretation." *Local 267 v. United Bhd. Of Carpenters*, 992 F.2d 1418, 1423 (6th Cir.1993).

Moreover, the Local's interpretation was upheld by the International President, the General Executive Board and the delegates to the International triennial convention. In fact, International President Short stated the following in his letter dated August 11, 1997 denying plaintiffs' appeal:

> The Local is entitled to place reasonable interpretations on its own Constitution... Quarterly dues in Local 306 should therefore be raised...without a vote of membership since the increase is mandated by the [International] Constitution.

Further, the delegates to the convention, who voted to uphold Local 306's interpretation, are vested with the "supreme governmental powers" of the International. Def's Ex. A at 6. (IATSE 1995 Const. Art. 2, §2). Accordingly, I find no genuine issue of material fact with respect to the dues increases which would give the Court reason to interfere with the Local's interpretation.

C. Dues Increases Did Not Violate the LMRDA

Section 101(a)(3)(B), 29 U.S.C. §411(a)(3)(B) of the LMRDA permits a labor organization "other than a local labor organization or a federation of national or international labor organizations" to increase dues if the majority of delegates vote the increase at a convention. Since the International is neither a "local" nor a "federation", it was permitted to increase dues through convention action. The 1994 and 1997 increases were properly authorized and approved by a majority vote of the delegates at IATSE's 1993 and 1995 conventions, respectively.

As set forth above, the International Constitution required all local unions to charge quarterly dues of at least $5 more than the per capita tax. Thus, Local 306 was not required by §101(a)(3) of the LMRDA, 29 U.S.C. §411(a)(3) to vote on the increases because they were properly approved at the conventions and complied with the International Constitution. Accordingly, there are no issues of fact with respect to whether the dues increases violated the LMRDA. *See Mori v. International Bhd. of Boilermakers*, 653 F.2d 1279 (9th Cir.1981) (international union authorized to establish minimum local dues by majority vote of the delegates voting at a regular convention without a vote of the local membership and local union required to comply); *Ranes v. Office Employees Int'l Union, Local No. 26*, 317 F.2d 915 (7th Cir.1963) (international union can increase the dues paid by members of its constituent locals by convention action without providing for votes by the members of the local).

Plaintiffs rely on the "financial burden test" enunciated in *King v. Randazzo*, 234 F.Supp. 388 (E.D.N.Y.1964) *aff'd* 346 F.2d 307 (2d Cir.1965), to argue that the per capita increase imposed was a financial burden on the members of the Local 306. Thus, plaintiffs argue, the defendants' compliance with the International's Constitution masked a dues increase that was imposed in contravention of §101(a)(3) of the LMRDA, 29 U.S.C. §411(a)(3). I disagree. Here, the International properly raised per capita taxes on all the local unions after a majority of delegates votes at the convention authorized the action, and, accordingly, quarterly dues were raised in order to comply with the International Constitution. Therefore, the case at bar is distinguishable because it involved convention action – conceded to be valid and authorized under 29 U.S.C. §411(a)(3)(B) – taken by an international union that had the effect of increasing the constitutional minimum for dues payable by members of all affiliated locals. *See Mori*, 653 F.2d at 1283.

The action of the International in no way displaced or undermined the democratic process protected by 29 U.S.C. §411(a)(3). *Cf. Seybert, et al. v. Lowen, et al.*, 63 F.2d 780 (2d Cir.1980) (local union member brought suit claiming that a per capita levied by the international upon the local was an unauthorized dues increase and required the international union to comply with 29 U.S.C. §411(a)(3)). Further, there is no reason nor any contention that casts doubt on the democratic process of the International's convention. Instead, I find that throughout this saga, the plaintiffs' rights were adequately protected.

D. Plaintiffs Have No Right to Participate in the Local

Plaintiffs' claims that the defendants violated the Local's and International's constitutions by expelling plaintiffs from the Local and refusing thereafter to accept their quarterly dues must also fail. Plaintiffs tendered their $37 quarterly dues only after they had been expelled. The voluminous correspondence among the plaintiffs and officers of the Local demonstrates that they were properly expelled and only after repeated notices and extensions were granted. Since the plaintiffs were no longer "paid up"

members under Article VII, §3 of the Local Constitution an the amounts that plaintiffs refused to pay were "lawfully imposed," no further procedure was required under Article 16, §2 of the International Constitution. Therefore, plaintiffs were properly expelled from membership and it was proper for the Local to return plaintiffs' late payment of their quarterly dues.

Further, the LMRDA only protects the rights of "members," 29 U.S.C. §411(a)(1), (a)(2), (a)(5). The LMRDA defines "members" in the following manner:

> any person who has fulfilled the requirements for membership in such organization, and who has neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

29 U.S.C. §402(o). Since plaintiffs ceased to be "members" in May 1996, they had to fight to participate or vote in meetings since that time and have no standing now to object to alleged discrimination or violations of the Local's Constitution in November 1996, March and April 1997 or in March 1998. Plaintiffs were first suspended in July 1996 and then expelled for non-payment of quarterly dues in September 1997, as provided under the Local's and International's constitutions. Accordingly, they had no rights to participate in the governance of the Local under the LMRDA. *See Phelan v. Local 305*, 973 F.2d 1050, 1055-57 (2d Cir.1992) (court has no jurisdiction under LMRDA where plaintiffs are not members of the defendant union); *Agola v. Hagner*, 678 F.Supp. 938, 992-94 (E.D.N.Y.1987) (plaintiffs who did not pay dues never became members of union and are thus precluded from obtaining relief under the LMRDA).

Additionally, §101(a)(1) under the LMRDA "curbs no abuse other than the discrimination against some union members and in favor of others with respect to voting rights." *Members for a Better Union v. Bevona*, 152 F.3d 58, 65 (2d Cir.1998). "To be viable, a claim under §101(a)(1) must allege the denial of some privilege or right to vote which the union has granted to others."

Id; see also Sim ---, F.3d ---, 1999WL 36058, at *6. Thus, while plaintiffs allege that they were denied the right to participate and vote at meetings where other union members were permitted, to the extent that plaintiff fail to allege said denial and seek relief under §101(a)(1), those claims must be dismissed for lack of subject matter jurisdiction under Fed.R.Civ.P. 12(b)(1). *See id.* at *7.

E. Plaintiffs' Claims Against the International and its Officers

Next in the catalogue of concerns, plaintiffs' claims that International President Short violated the Local's and International's constitutions as well as the LMRDA when he denied their appeal. This argument too must fail. As set forth above, the dues increase in question did not violate LMRDA §101(a)(3), 29 U.S.C. §411(a)(3) because they were properly authorized. In addition, since plaintiffs were not members under the definition of the LMRDA, they were not entitled to any of the protections under the Act. Further, plaintiffs' claims that Short misinterpreted the constitutions of the International and Local are meritless. Under the International Constitution and the case law discussed above, the International President's determination was neither unreasonable nor a product of bad faith.

Article 17, §1 of the International Constitution, provides that where an internal appeal is taken, "in the discretion of the discretion of the International President or of the tribunal from which or to which an appeal is taken, the effect of any such decision, rule, regulation, order, mandate or act or omission, may be stayed during appeal;" Defs' Ex. A at 32-33(IATSE 1995 Const. Art.17, §1). Since, under the International Constitution, Short was entitled to exercise his discretion and deny a stay, and since there is no evidence that suggests that this decision was made in bad faith, I decline to overturn said denial.

Plaintiffs' allegation has International President Short "pre-dated" a letter to them regarding their appeal and thereby violated the Local's and International's constitutions as well as the LMRDA is of no moment. The only evidence offered by the

plaintiffs is that they did not receive the letter until two months after it was dated. Conversely, Short's assistant states that she mailed the letter on the date that appears on the letter. Most importantly, it was merely a confirmatory notice written as a courtesy which informed plaintiffs that Short received plaintiffs' appeals. This hardly constitutes a genuine issue of material fact. Receipt of the letter played no role in plaintiffs' appeals or the General Executive Board's decision to uphold the International President's ruling.

Similarly, plaintiffs' claim against Secretary-Treasurer Proscia that he failed to keep "true and correct record[s]" pursuant to Article 9, §1(c) of the International Constitution is without merit. They allege that Proscia knew Short's letter was pre-dated and violated the International Constitution by referencing the predated letter in his own letter. There is no basis for this frivolous allegation; Proscia's letter makes no representation as to when the first letter was signed or sent and the reference is not even a material fact in dispute. Thus the claim, assuming it is cognizable before this court, against Proscia is dismissed.

Further, there are no grounds for this Court to find that the General Executive Board or the International Convention did anything wrong. Their only vice was to rule against the plaintiffs', a position they were well within their rights to take. Thus, I find that there are no genuine issues of material fact with respect to the claims against the International and its officers regarding the plaintiffs' appeals.

III. *CONCLUSION*

Finally, I find no merit in any of the remaining claims, i.e. no genuine issues of material fact. For the reasons stated, the defendants' motion for summary judgment is GRANTED, the plaintiffs' motion is DENIED and the complaint is DISMISSED. The Clerk of the Court is instructed to close this case.

SO ORDERED.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERRICK J. BRODSKY and HOWARD K. BRODSKY,

Plaintiffs,

- against -

UNION LOCAL 306, MOTION PICTURE PROJECTIONISTS, VIDEO TECHNICIANS AND ALLIED CRAFTS, I.A.T.S.E., JOEL DEITCH, Individually, as Secretary-Treasurer of Union Local 306, STEVE D'INZILLO, Individually, as President of Union Local 306, MICHAEL GOLDBERG, Individually, as Business Representative of Union Local 306, INTERNATIONAL ALLIANCE OF THEATRICAL AND STAGE EMPLOYEES, AFL-CIO, THOMAS C. SHORT, Individually, as President of the International Alliance and MICHAEL W. PROSCIA, Individually, as General Secretary-Treasurer of the International Alliance,

Defendants.

JUDGMENT

Both parties having moved for summary judgment and the matter having come before the Honorable Judge Harold Baer, United States District Judge, and the Court on February 23, 1999 having rendered its Opinion (81951) and Order granting

defendants' motion for summary judgment, denying plaintiffs' motion, and dismissing the complaint, it is

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion (81951) and Order, dated February 23, 1999, defendants' motion for summary judgment is hereby granted, plaintiffs' motion is denied and the complaint is dismissed.

Dated: New York, New York
February 26, 1999

James M. Parkison
Clerk of Court
By: /s/ by Deputy Clerk

APPENDIX D

Excerpts from Respondent International Union's Constitution

(italicized emphases added)

Article Seven ("The International President")

...

Section 5 ("Judicial Powers"):

...The President shall have the authority to entertain appeals from the decision of the affiliated local unions, as provided in Article Seventeen ["Appeals"] of this Constitution.

Section 6 ("Interpret Constitution and By-Laws"):

The laws of this Alliance as contained in this Constitution and By-Laws shall be interpreted by the International President and his decisions thereon shall be binding upon all individual members and affiliated local union of the Alliance until reversed in the manner hereafter provided.

The International President shall render decisions upon questions of law where the Constitution and By-Laws contain no express provisions for the determination thereof. His *ruling* upon such positions shall be made in conformity with the spirit and substance of the Constitution and By-Laws and with regard to the equities of the circumstances.

Any *decision* of the International President, rendered pursuant to the provisions of this Section, shall be subject

to appeal to the General Executive Board in the manner provided in Article Seventeen ["Appeals"].

Article Nine ("General Secretary Treasurer")

Section 1 ("Routine Duties")

The General Secretary-Treasurer shall perform the following duties:

...

c. He shall cause to be kept a *true and correct record* of the business of his administration...

Article Fourteen ("Revenues")

Section 1 ("Per Capita Tax"):

...Every *affiliated local union* shall be required to purchase at the appropriate time not less than one [receipt] stamp per quarter for each and every member carried on its membership rolls...

Article Seventeen ("Appeals")

Section 1 ("Right of Appeal"):

Any member...aggrieved by the *decision, rule, regulation, order, mandate, or act or omission,* of any officer, body or tribunal of this Alliance may appeal his...case in the following order: (1) From the *decision, rule, regulation, order, mandate, or act or omission,* of the local union to the International President of this Alliance; (2) from the *decision, rule, regulation, order, mandate, or act or omission, of the International President* to the General Executive Board; (3) from the *decision, rule, regulation, order, mandate, or act or omission,* of the General Executive Board of this Alliance to the Alliance in Convention assembled, and the latter body shall be the

tribunal of ultimate judgment. However, in the interim, the *decision, rule, regulation, order, mandate, or act or omission,* of any proper officer, body, or tribunal of this Alliance shall be enforced pending disposal of appeal; *except that, in the discretion of the International President or of the tribunal from which or to which an appeal is taken, the effect of any such decision, rule, regulation, order, mandate, or act or omission, may be stayed pending appeal.*

Section 2 ("Time Allowed for Filing"):

Appeals from a lower to a higher tribunal of this Alliance shall be cognizable only if filed *within thirty (30) days* after the decision.

Article Nineteen ("Powers and Duties of Local Unions"):

...

Section 12 ("Financial Obligations"):

Each affiliated local union shall purchase from the General Secretary-Treasurer of the Alliance one Thirty-Dollar ($30.00) [now Thirty-Five Dollars ($35) by act of the Alliance's last convention] Quarterly Receipt Stamp...for each member of the local union whose name appears on the roster of membership of the current quarter...

Section 14 ("Quarterly Dues"):

It shall be compulsory for each affiliated local union of the Alliance to collect from each individual member thereof...quarterly dues of not less than Five Dollars ($5.00) over and above the amount of the per capita tax [presently Thirty-Five Dollars ($35)], causing the proper receipt stamps to be affixed to the dues book of the individual member as evidence of such payment.

...

Section 26 ("Additional Revenues"):

No local union of this Alliance shall be allowed to charge members of affiliated sister local unions for the privilege of working within its jurisdiction, except that any local which obligates its own individual members to contribute a given percentage of their earnings, over and above the *monthly* dues, shall be permitted to collect from the members of affiliated sister local unions working within its jurisdiction the same percentage.

If a member of a local of this Alliance works in the jurisdiction and under a contract held by a sister local he shall pay the same work assessment to such local as is paid by members of the local in which he works.

If the work assessment paid to the sister local is the same or more than is charged by the home local, he shall pay nothing to his home local.

However, if the work assessment to the home local is greater than the assessment to the sister local in which he is employed, he shall first pay the sister local its percentage and then pay the home local the difference between such payment and the work assessment.

Article Twenty-One ("Privileges and Duties of Membership"):

...

Section 12 ("Financial Obligations"):

Members of this Alliance shall be obligated to meet the financial obligation *properly* imposed upon them by their respective local unions.

Article Twenty-Three ("Responsibility of International"):

a. The Alliance shall not be liable or responsible for any of the activities, actions or omissions of any affiliated Local or its officers, employees, representatives, agents or members

unless same is *expressly authorized or directed* by the International President or the General Executive Board or the Convention...

APPENDIX E

Excerpts from Respondent Local Union's Constitution & By-Laws

(italicized emphases added)

CONSTITUTION

Article IV ("Nomination and Election"), Section 5, Paragraph C, as amended:

There shall be a *Ballot Committee of five (5) members* including the Secretary-Treasurer who shall chair the Ballot Committee. The other four shall be appointed by the President, *two of whom shall be opponents*. The Ballot Committee shall perform the tasts [sic] necessary to *properly* conduct the secret mail ballot referendum. These tasks shall include checking the Ballot to be opened against the official membership list; and to check the membership list against the returned ballot envelopes to insure that only eligible member's [sic] returned ballot are counted. *The Ballot Committee shall act as tellers and tally the votes of the returned ballots.*

Article V ("Duties of Officers"):

Section 1 ("President"):

It shall be the duties of the President to preside at all meetings of the Union, to preserve order therein, and enforce due observance of the laws...

He shall not make or second any motion. He shall state the questions proposed for consideration...

He shall not take part in any debate while in the chair.

Article VII ("Revenue"), Section 1, Paragraph 2, as amended:

That all members, excepting those employed by agencies of the civilian government and members to the Allied Crafts category shall pay dues of $30.00 plus 3 per cent [further amended to 3½% on August 3, 1987, and 4 % by the subject referendum on April 3, 1998] of their basic weekly earnings...

Article XI ("Amendment"), Sections 2 & 3, as amended:

2. All proposed *amendments or alterations* to this Constitution shall first be read at *two consecutive* [general membership] *meetings before being voted on.* Such proposed Constitutional amendments or alterations shall be *subject to debate immediately after their reading* at either or both meetings. Amendments to proposed Constitutional amendments, which do not change the intent of the proposed Constitutional amendment, shall be considered at the meeting of the second reading. Voting on such Constitutional amendments of alterations shall be by *secret mail ballot to all members* by and through the American Arbitration Assoc. under its rules and procedures; in event of the unavailability of the A.A.A., the services of the Honest Ballot Assoc. shall be similarly utilized. Such secret mail ballot shall be issued through the A.A.A. of Honest Ballot Assoc. within fifteen (15) days after the date of the second reading. Not less than twenty-one (21) days shall be allowed between the time the ballots are mailed and the return deadline.

3. *Two-thirds (2/3) vote of the members voting valid ballots* must vote in favor before any proposed amendment or alteration is declared adopted and become part of this Constitution. Notification for same must be sent to all members.

BYLAWS

Section 19:

Roberts Rules of Order shall be the authority by which the conduct of the meetings of this Union shall be conducted, except as herein provided.

Section 20:

No part of these By-Laws shall be repealed, altered, amended or annulled unless the membership of this Union shall have been notified at last [sic] *one month* prior thereto, and then only by a *two-thirds (2/3) vote* of those present.

APPENDIX F

Excerpt from
Respondent Local Union Secretary-Treasurer
Joel Deitch's Resolution Notice to Members,
29 March 1996

(italicized emphases added)

UNION LOCAL 306
MOVING PICTURE PROJECTIONISTS, VIDEO
TECHNICIANS AND ALLIED CRAFTS
723 7th Avenue, 11th Floor
New York, New York 10019

March 29, 1996

Dear Member:

The next Regular Membership Meeting of Local 306 will be held at 9:00 Am on Wednesday *April 10, 1996* in the auditorium of our Union office at 723 Seventh Avenue, 11th Floor between 48th and 49th Streets in Manhattan.

Important Notice: The dues problem and incorrect billings have been reviewed and studied by the office and a committee of volunteers. This resulted in the Resolution presented below. It was exhaustively discussed by the Executive Board, which unanimously approved. The Resolution is quite clear, specific and self-explanatory. It will be voted on at this meeting, so please make every effort to attend so you can participate in questions, answers and discussions.

> Whereas, evidences of dues errors required notice to members employed in theatres, to disregard the dues bill for the April-May-June quarter, and

Whereas, In order to do the clerical work necessary to verify the working schedule and actual shifts and hours worked, by each member in each theatre, will be too time consuming for the office staff; and costly to the General Fund, and

Whereas, After due consideration of several alternatives it is determined that

It Be Resolved: That every member, working in a motion picture theatre (excepting those on dues check-off), be required to send to the Local 306 office a correct copy of the weekly projectionists' payroll sheet submitted to the manager; *that the straight time pay on each payroll sheet for the thirteen weeks, of each calendar quarter,* be added; *and* that *three and one half percent (31/2%) of that sum, plus thirty-two dollars for basic dues* be mailed, in a check or money order, to Local 306; and that the due date for such quarterly dues be deferred to the third Wednesday of the first month of the quarter; and that any member failing to pay their dues on that specific Wednesday shall be considered delinquent and suspended. For this current quarter only (April-May-June of 1996) the due date for payment shall be the fourth Wednesday of April 1996 to allow time to compile schedules and earnings for January-February and March 1996 on which dues for April-May and June are to be paid. Thereafter each quarter's dues payments are to calculated on the previous quarter's earnings.

...

Fraternally,
/s/ Joel Deitch
Secretary/Treasurer

JD/jv

APPENDIX G

Petitioners' and Elizabeth Gross' Internal Appeal to Respondent International Union and its President Respondent Thomas C. Short, 8 July 1997

(referenced exhibits not included)

APPEAL and REQUEST FOR A STAY OF ANY AND ALL ACTIONS AGAINST PETITIONERS IN THIS CONTROVERSY BY RESPONDENTS DURING THE PENDENCY OF THE APPEAL

Petitioners **Merrick J. Brodsky** (hereinafter "**Brother Merrick**"), **Howard K. Brodsky** (hereinafter "**Brother Howard**") and **Elizabeth M. Gross** (hereinafter "**Sister Betty**") jointly and severally submit the following appeal, request and application:

1. Irrespective of any averment to the contrary by Respondent **Union Local 306, Motion Picture Projectionists, et al.** (hereinafter the "**Union**"), **Brother Merrick, Brother Howard** and **Sister Betty** are members in good standing of the **Union**.

2. On July 7th, 1997, **Brother Merrick** received a certified letter dated July 3rd, 1997, from the **Union**'s Secretary-Treasurer **Joel Deitch** (hereinafter "**Brother Joel**").

3. Said letter "advised" **Brother Merrick** that "[he] ha[s] been delinquent in paying [his] dues for 6 months or more and [he] owes[s] $14.00 plus a reinstatement fee of 50% of [the **Union**'s] initiation fee which comes to $500.00" (emphasis original).

4. The letter further stated that "[i]f payment is not made within 10 days of the date of this letter, [**Brother Merrick**] will automatically be expelled from [the **Union**]." A true copy of said letter is appended hereto as **Exhibit 1**.

5. It is to be noted that the preceding week **Brother Merrick** received a telephone call at his home from a representative of the **Union** who inquired of **Brother Merrick** when he was leaving on his scheduled vacation and when he would be returning.

6. Notwithstanding the fact that **Brother Merrick** already had duly submitted his vacation schedule to the **Union**, he reiterated the fact that his vacation was from July 9th through July 24th and that he would be out of the country from July 9th to July 18th.

7. It therefore appears that the timing of **Brother Joel**'s letter and the abbreviated time-period provided for **Brother Merrick**'s reply thereto were intentionally calculated to circumscribe the availability of **Brother Merrick**'s responses and/or redress thereto before the draconian measures of the **Union** would be effected against him in abstentia.

8. That **Brother Joel** and the **Union** can feel they can act so arbitrarily and invidiously against **Brother Merrick** and his co-petitioners can only be derived from the inescapable fact that the petitioners' prior attempts to seek redress, in regard to the very issues which are the subject matter of this controversy, have been dead-lettered, both at the Local and International levels.

9. This controversy originated with the letter, dated March 29th, 1996, the **Union** sent its members which improperly noticed them of a "Resolution" it was putting forth for a vote at the following membership meeting on April 10th, 1996. A true copy of said letter is appended hereto as **Exhibit 2**. Pursuant to Section ("§") 20 of the **Union**'s By-Laws, "at last [sic] one month['s notice]" was to be given the membership prior to any alteration or amendment of the By-Laws "and then by a two-

thirds (2/3) vote of those present [at the meeting]" (emphasis added). A true copy of the **Union**'s Constitution and By-Laws are appended hereto as **Exhibit 3**. *See* p. 41 thereof. True copies of the amendments to said Constitution and By-Laws, as supplied by the **Union** to the United States Department of Labor (hereinafter "DOL") - not to its members (despite repeated requests and appeals by **Sister Betty** and others to **Brother Joel** and/or to the International therefor) - are appended hereto as **Exhibit 4**. True copies of the earliest and most recent letters between and among **Sister Betty**, **Brother Joel** and the International which illustrate this lingering and unresolved issue are appended hereto as **Exhibits 5, A through E**.

10. Said "Resolution", inter alia, (a) assessed at three-and-one-half percent (3 & 1/2%) the "straight-time" pay on the payroll sheet of each and every member who is employed as a theatre-projectionist - which payroll sheet s/he, pursuant to said "Resolution", was now obligated to submit, and (b) recited Thirty-Two Dollars ($32) as the "basic dues", with both "a" and "b" above to be considered as "quarterly dues".

11. Barely two (2) weeks later, in a letter to its members, dated April 11th, 1996, a true copy of which is appended hereto as **Exhibit 6**, the **Union** reported that its "Resolution" was "adopted overwhelmingly" the day before at its membership meeting. It further provided in this letter what it termed "clarifications" on how dues were to be calculated, based upon the varying terms of the three (3) collective bargaining agreements (hereinafter "CBAs") then, and presently, in effect. Therein the **Union** also noticed its members that "[w]ith the adoption of the Dues Resolution, Dues Bills will be discontinued. As the Business Office has frequently advised: The best and easiest way to pay dues is through Dues Check-Off". As demonstrated hereinbelow, such Dues Check-Off provides the **Union** with a hidden windfall and a motive to "encourage" members to participate by making examples of members - like petitioners - who don't "go with the flow". (It is more than interesting to note that Pension & Welfare payments made by the employers are based on the same

operating hours assessable as dues. Another aspect to this controversy, is whether the **Union** is as zealous in collecting contributions from the employers for the members' benefit fund as it is collecting Fourteen Dollars [$14] from **Brother Merrick** for its benefit.)

12. There are significant flaws in the **Union**'s "Resolution" and "clarifications":

    a. Firstly, assessing the dues on "straight-time pay on each payroll sheet" rather than on the **Union** Constitution's "basic weekly wages" (which by pattern and practice historically, tracked the "operating hours" as delineated in Schedule A of the present CBAs and/or the Schedule B theatre cards of the prior CBAs, wherefrom the **Union** culled the information it recorded on each theatre-projectionist member's job referral ["yellow work"] slip) allows for a hidden and unarticulated increase in such members' dues. For instance, under the present CBAs, overtime hours between 8 a.m. and 2 a.m. is to be paid at straight-time rates. Such time is undifferentiated by certain employers as "overtime". Moreover, certain additional compensation, such as "prep-time", i.e. the half-hour before operating hours commence, is likewise paid at straight-time rates, and is, under the **Union**'s post-facto "clarifications", assessed for dues (when it had not been since August 1993 when the present CBAs were executed).

    b. Secondly, the CBAs (with their varying terms) cannot dictate nor control the protocol in the calculation of the assessment of dues. The CBAs govern the relationship and obligations between employees and employers. The **Union**'s Constitution, on the other hand, governs the relationship between the **Union** and its members, and Article VII, Section 1 (as amended) does articulate such protocol. *See* **Exhibit 4**, last page.

    c. Thirdly, said Constitution cannot be amended by a "Resolution" (as are the By-Laws), rather by a

Constitutional amendment which requires two (2) readings at two (2) consecutive monthly membership meetings and two-thirds (2/3) vote by secret-mail ballot of the entire voting membership (as opposed to an open vote of the attending members at a given membership meeting). *See* **Exhibit 4**, Article XI, fourth page. Thus, even if the "Resolution" - defective notice notwithstanding - were passed unanimously at the April 10th, 1996 membership meeting, it still would have been Constitutionally infirm.

13. Whatmore, Article VII, § 1 of the **Union**'s Constitution, as made available by the DOL, and **Brother Joel**'s synopsis of same in a letter to **Sister Betty**, dated May 30th, 1995, a true copy of which is appended hereto as **Exhibit 7**, represents that Thirty Dollars ($30) be the basic quarterly component of dues. Yet an additional Two Dollars ($2) - and now Four Dollars ($4) - are "passed-along" to the **Union**'s members, the former memorialized as "thirty-two dollars [$32] in basic dues" in the **Union**'s "Resolution".

14. Said "Resolution" was appealed on April 19th, 1996, by **Sister Betty** to the International, pursuant to the provisions of the International Constitution. A true copy of said appeal is appended hereto as **Exhibit 8**. In contravention of said Constitution, said appeal was dead-lettered with nary an acknowledgment of receipt.

15. Contemporaneously, in a letter to **Brother Joel**, dated April 23rd, 1996, **Brother Merrick** explained to the Secretary-Treasurer how he had computed his Constitutional quarterly dues and assessment in the sum of Three Hundred and Thirty-Six Dollars and Twenty-One Cents ($336.21). A check in the amount of said sum was included. A true copy of said letter and check is appended hereto as **Exhibit 9**.

16. **Brother Michael Goldberg**, Business Representative of the **Union** (hereinafter "**Brother Michael**"), replied to **Brother Merrick** (and to a contemporaneous letter sent to the **Union** by **Brother Howard**), ~~in a letter~~ dated May 7th, 1996, a true copy of which is appended hereto as **Exhibit 10**. In said

letter, **Brother Michael** rationalized the aforementioned "pass[ ]-along" by citing an unsubstantiated International "Convention action [whereby] increases in per-capita [tax] due the International are passed along in the quarterly dues due and owing by the members".

17. **Brother Michael**'s representation was inconsistent with the provisions of the International's Constitution then in effect:

    a. Article Fourteen, § 1 thereof stated that "every affiliated local union [e.g. the **Union**] shall be required to purchase at the appropriate rate not less than one stamp per quarter for each and every member carried on its membership roll."

    b. Article Nineteen, § 12 thereof stated that "on the first day of each quarter each affiliated local union shall purchase from the General Secretary-Treasurer of the [International] Alliance one Thirty-Dollar ($30.00) Quarterly Receipt stamp...for each member of the local union whose name appears on the roster of membership of the current quarter".

    From the two (2) recited sections, it is evident that the per capita tax be a <u>direct</u> tax levied by the International upon the **Union** and other sister affiliates. It is <u>not</u> a direct tax to be levied upon each member of the **Union** or member of a sister affiliate. Also note that the International's per capita tax be <u>Thirty Dollars ($30)</u> per quarter.

18. In his letter, **Brother Michael** quoted Article Nineteen, § 14 of the International's Constitution which stated: "It shall be compulsory for each affiliated local union of the Alliance to collect from each individual member thereof...quarterly dues of not less than Five Dollars ($5.00) over and above the amount of the per capita tax, causing the proper receipt stamps to be affixed to the dues book of the individual member as evidence of such payment". From this **Brother Michael** adduced that the **Union**'s "[q]uarterly dues should have been $35".

19. **Brother Howard** answered **Brother Michael** in a letter dated May 10th, 1996, a true copy of which is appended hereto as **Exhibit 11**. The controversy was further addressed in contemporaneous letters, dated July 2nd, 1996, which accompanied **Brother Merrick & Howard**'s payment of their quarterly dues and assessment, true copies of which are appended as **Exhibits 12, A & B.**

20. **Brother Joel** then replied to **Brothers Merrick & Howard** in a single letter dated September 5th, 1996, a true copy of which is appended hereto as **Exhibit 13**. Therein **Brother Joel** proffered a different rationale, inharmonious to **Brother Michael**'s: "In the past, Local 306 was able to absorb Convention per Capita [sic] tax increases, although we were in technical violation of the IA Constitution. In recent years we were unable to continue this practice. Once finances became tight and as the IA increased their per capita tax we had to pass on the same $2.00 increase instead of absorbing it as in the past". **Brother Joel** continued: "This per capita tax is for the sole purpose of paying for your stamps which is affixed in your dues book quarterly."

21. **Brother Joel**'s last statement flies in the face of Article Nineteen, § 14 of the International's Constitution quoted in Paragraph ("¶") "18" hereinabove. It is the member's payment of his quarterly dues (which amount, de minimus, should not be less than Five Dollars ($5) over the amount of the per capita tax the **Union** pays directly to the International for every member listed on its roster) which causes his or her book to be stamped, not the **Union**'s payment of the per capita tax, which purchases the stamps from the International to be so affixed.

22. Moreover, payment by theatre-projectionist members of three-and-one-half percent (3 & 1/2%) of their basic weekly wages as part of their quarterly dues more than meets the "not-less-than-Five-Dollars ($5.00)" requirement. To "pass on" an additional Two Dollars ($2) - now Four Dollars ($4) - is unauthorized by the International Constitution and is in

contravention of the **Union**'s Constitution. With all due respect intended, **Brothers Joel & Michael**'s arguments and rationalizations are faulty, imprecise and cannot withstand rational scrutiny.

23. Nevertheless, as **Sister Betty**'s appeal languished before the International, the controversy went unresolved. Further letters were exchanged between **Brothers Merrick & Howard** and **Brother Joel** in October and November of 1996. True copies of those letters are appended hereto as **Exhibits 14, A through C**.

24. Upon the submission by **Brothers Merrick & Howard** of their Constitutional dues and assessments for the first quarter of 1997, *see* **Exhibits 15, A & B**, appended hereto, they and **Sister Betty** received form letters from **Brother Joel**, true copies of which are appended hereto as **Exhibits 16, A through C**. Said form letter indicated that "the IATSE per capita tax increase [of] $2.00 per quarter beginning January 1, 1997...is to be passed on directly to each member. Therefore starting January 1, 1997 dues will be 3 1/2% of straight time earnings plus the new basic dues of $34.00 per quarter which includes the new IA per capita tax increase." Said letter also threatened "legal action" and "discharge[ ]" from employment if the addressees' "entire dues" were not paid.

25. **Brothers Merrick & Howard** answered **Brother Joel**'s form letter in a letter dated January 29th, 1997, a true copy of which is appended hereto as **Exhibit 17**. In reply to their alleged dues delinquency they "directed to **[Brother Joel]** attention the incontrovertible facts that [their] respective 1996 union membership cards have all the IA stamps affixed thereto as [they] heretofore tendered [their] lawful and Constitutional dues. Whatmore, **[Brothers Merrick & Howard]** were not among...[those] brothers and sisters who were disenfranchised for alleged dues infractions in the most recent dues amendment vote, the presumption being that [they were] current, timely and correct in [their] respective dues submissions."

26. Further, their reply memorialized **Brother Merrick**'s good faith proposal he put forth at the **Union**'s November 1996 membership meeting, to amend the (subsequently) defeated constitutional amendment. - Said proposal provided a legitimate mechanism to harmonize the **Union**'s basic dues component of Thirty Dollars ($30) with the IA's per capita tax. **Brother Merrick**'s amendment to the amendment passed, but the **Union**'s President, Steve D'Inzillo, in derogation of said office, and in contravention of the **Union**'s Constitution (which mandates that the President "shall not make or second any motion [nor]...shall [he]...take part in any debate while in the chair", *see* **Exhibit 3,** Article V, § 1, ¶¶ 1 & 3, p. 12), commandeered the meeting, spoke negatively on the subject of **Brother Merrick**'s amendment, and invalidated same in a manner contrary to Robert's Rules of Order and in contravention of § 19 of the **Union**'s By-Laws. A true copy of the unexpurgated audiocassette of said meeting to corroborate the above will be provided upon request.

27. **Brother Joel**, in his response to **Brothers Merrick & Howard** in a letter dated January 30th, 1997, a true copy of which is appended hereto as **Exhibit 18**, feebly rationalized that "the Local issued the appropriate stamps to [**Brothers Merrick & Howard**] because we were continuing to correspond with [them] on the issue of the underpayment of [their] quarterly dues. Additionally the amount involved was so small and we truly hoped that you would see fit to pay the difference without more drastic action..." (Obviously, such "drastic action" for such a "small...amount" is not out of the question now.) As far as **Brothers Merrick & Howard**'s eligibility to vote, **Brother Joel** reasoned that "because [they] raised an issue regarding the legitimacy of the dues increase [they] were given the benefit of the doubt for voting purposes only. In retrospect, this may have been an error on my part".

28. In prospect, **Brother Joel** and the **Union** modified their tactics and disenfranchised **Brothers Merrick & Howard** in the two (2) successive constitutional amendment votes, the first such disenfranchisement being memorialized in a letter to **Brother**

Joel by **Brother Merrick**, dated April 14th, 1997, a true copy of which is appended hereto as **Exhibit 19**.

29. Only yesterday (July 7th, 1997) did **Brothers Merrick & Howard** respectively receive, under separate cover from **Brother Joel**'s letter which constitutes **Exhibit 1** hereto, their union membership cards, alas without the IA stamps affixed thereto, but with the acknowledgement that they tendered their Constitutional dues. *See* **Exhibit 20**, which is a true facsimile of **Brother Merrick**'s union card.

30. **Brother Joel**'s most recent letter was answered by **Brothers Merrick & Howard**, a true copy of which is appended hereto as **Exhibit 21**.

WHEREFORE, Petitioners request that the International:

A. Order that the **Union**'s Secretary-Treasurer **Joel Deitch** provide forthwith to each Petitioner and to every member of the **Union** an up-to-date version of the **Union**'s Constitution and By-Laws, including any and all amendments thereto since its last official printing in 1972.

B. Investigate the acts and omissions of the **Union**'s Secretary-Treasurer **Joel Deitch.**

C. Declare as unconstitutional the direct taxation upon the **Union**'s members of the increase in the International's per capita tax, which the **Union** has imposed upon its members under the guise of a "pass along" levy.

D. Order that the **Union**'s Secretary-Treasurer uphold his Constitutional duty and collect from the **Union**'s members the dues and assessments as defined and permitted in the **Union**'s Constitution.

E. Order that the **Union** not discriminate against those members who elect not to enroll in the Dues Check-Off system.

F. Order that the **Union** re-institute its practice of sending quarterly dues bills to its members not enrolled in the Dues Check-Off system.

G. Order the **Union**'s Secretary-Treasurer **Joel Deitch** to correct the collection of dues and assessments under the dues Check-Off system to conform with the provisions of Article VII, § 1 of the **Union**'s Constitution.

H. Order that the **Union**'s computation of the three-and-one-half percent (3 & 1/2%) assessment shall be derived from "the earnings of members employed...calculated on the salary that the steady job pays", pursuant to Article VII, § 1 of the **Union**'s Constitution, which historically has been the "basic weekly wages" as reflected on the job referral ("yellow work") slips. Said "basic weekly wages" shall be computed exclusive of overtime, prep-time, make-up, break-down or move-over compensation, vacation or sick-time differential or such other contractual compensation paid at straight-time rates.

I. Order that the **Union**'s Business Representative issue to each and every employed theatre-projectionist member of the **Union** an updated job referral ("yellow work") slip, pursuant to Article V, § 5 of the **Union**'s Constitution.

J. Stay any and all actions against Petitioners in this controversy by the **Union**, its officers, agents and employees during the pendency of this appeal.

Dated: 8 July 1997

/s/ Brother Merrick J. Brodsky
/s/ Brother Howard K. Brodsky
/s/ Sister Elizabeth M. Gross

APPENDIX H

Respondent International Union President Thomas C. Short's Determination in Petitioners' and Elizabeth Gross' Internal Appeal, 11 August 1997

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA
1515 Broadway
New York, New York 10036-5741

OFFICE OF THE PRESIDENT

August 11, 1997

Mr. Merrick J. Brodsky
2790 Bragg Street
Suite 207
Brooklyn, NY 11235-1141

RE: Appeal File No. X-3790

Dear Brother Brodsky:

I have reviewed all of the material submitted by Brothers Merrick and Howard Brodsky and Sister Elizabeth Gross and the Local's response. In my opinion there is no merit to the assertion that Local 306 is improperly calculating how the work assessment should be applied. The Local is entitled to place reasonable interpretations on its own Constitution.

As to the issue of the pass along increase in the quarterly dues, Article Nineteen, Section 14 of the I.A. Constitution reads as follows:

> "It shall be compulsory for each affiliated Local Union of this Alliance to collect from each individual member thereof, except retired members qualifying as such under Article Fourteen, Sections 1A and 1B, quarterly dues of not less than Five Dollars ($5.00) over and above the amount of the per capita tax, causing the proper receipt stamps to be affixed to the dues book of the individual member as evidence of such payment".

Section 14 refers specifically to quarterly dues which must be at least five dollars higher than the I.A.'s per capita tax. No mention is made of a work assessment and the section does not allow a Local to consider work assessments as a factor in determining quarterly dues.

As the appellants point out, Local 306 is therefore currently in violation of Article Nineteen, Section 14 of the I.A. Constitution. While I have no desire to impose additional financial burdens on the members of Local 306, I cannot unilaterally change the I.A. Constitution. Quarterly dues in Local 306 should therefore be raised to $37.00 per quarter. This should be done without a vote of membership since the increase is mandated by the I.A. Constitution.

Finally, all other issues raised by the appeal are denied and I see no reason to grant a stay of any action Local 306 might take to enforce its current dues structure.

Fraternally,
/s/ Thomas Short
International President

TCS:jmv
cc: I.A.T.S.E. Local no. 306

APPENDIX I

Petitioners' and Elizabeth Gross' Internal Appeal to Respondent International Union's General Executive Board, 8 September 1997

(referenced exhibits are excluded; pages listed in footnotes refer to those in original text)

APPEAL TO THE GENERAL EXECUTIVE BOARD FROM THE DETERMINATION OF INTERNATIONAL PRESIDENT THOMAS C. SHORT

Brother Merrick J. Brodsky (hereinafter "**Brother Merrick**"), **Brother Howard K. Brodsky** (hereinafter "**Brother Howard**") and **Sister Elizabeth M. Gross** (hereinafter "**Sister Betty**")(all hereinafter collectively referred to as "**Appellants**") jointly and severally appeal to the General Executive Board of the International Alliance of Theatrical and Stage Employees (hereinafter "IA") from a Determination made by **IA President Thomas C. Short** (hereinafter "**Brother President Short**"), dated August 11, 1997.[1]

STATEMENT OF THE FACTS

This controversy originated with a letter, dated March 29, 1996,[2] that **Union Local 306, Motion Picture Projectionists, Video Technicians and Allied Crafts** (hereinafter "**Local 306**") by its Secretary-Treasurer **Joel Deitch** (hereinafter "**Brother Joel**")(both hereinafter jointly referred to as "**Appellees**")

[1] Said Determination is appended hereto as **Exhibit 25**.

[2] Appeal, Exhibit 2.

forwarded its members. Said letter improperly noticed them of a "Resolution" it was putting forth for a vote at the following membership meeting on April 10, 1996.[3] Said "Resolution", inter alia, (a) assessed at three-and-one-half percent (3½%) the "straight-time" pay on the payroll sheet of each and every member of **Local 306** who is employed as a theatre-projectionist - which payroll sheet s/he, pursuant to said "Resolution", was now obligated to submit, and (b) recited Thirty-Two Dollars ($32) as the "basic dues", with (a) and (b) above both to be considered as "quarterly dues".

Barely two (2) weeks later, in a letter to its members, dated April 11, 1996,[4] **Appellees** reported that its "Resolution" was "adopted overwhelmingly" the day before at its membership meeting. It further provided in this letter what it termed "clarifications" on how dues were to be calculated, based upon the varying terms of the three (3) collective bargaining agreements ("CBAs") then, and presently, in effect. Therein **Appellees** also noticed the members that "with the adoption of the Dues Resolution", Dues Bills will be discontinued. As the Business Office has frequently advised: The best and easiest way to pay dues is through Dues Check-Off".

Thereafter a series of correspondence were exchanged between **Brothers Merrick and Howard** and **Brothers Joel** and **Local 306**'s Business Representative **Michael Goldberg** (hereinafter "**Brother Michael**") wherein the parties expressed their positions in regard to **Local 306**'s "pass-along" to its

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[3] Pursuant to Section 20 of **Local 306**'s By-Laws, "at last [sic] *one month's* notice" was to be given the membership prior to any alteration or amendment of the By-Laws "and then only by a two-thirds (2/3) vote of those present [at the membership meeting]" (emphasis added), Appeal, Exhibit 3, Constitution and By-Laws of **Local 306**, p. 41. For true copies of the amendments to said Constitution and By-Laws as supplied by **Local 306** to the U.S. Department of Labor - not to its members, despite repeated requests by **Sister Betty** to **Brother Joel**, *see* Appeal, Exhibit 4. For true copies of the earliest and most recent letters between and among **Sister Betty**, **Brother Joel** and the IA, *see* id., Exhibits 5-A through 5-E.

[4] Appeal, Exhibit 6.

members of the IA's per capita tax increase.[5] Throughout this exchange, which extended over an eleven (11)-month period, **Sister Betty**'s appeal languished before **Brother President Short** and the matter went unresolved.

During the aforesaid period, **Appellees** put forward four (4) unsuccessful ballotings within a six (6) month period to raise the "dues percentage" - its own language therefor in the ballots.[6]

A letter, dated December 12, 1996, was also forwarded to the members by **Appellees**, which "advised" them that:

> "[I]n accordance with the IA Convention change, adopted by the July 21, 1995 convention, the IATSE per capita tax will be increased $2.00 per quarter beginning January 1, 1997. This increase is to be passed on directly to each member. The last IA per capita increase of $2.00 per quarter was passed on to the membership two years ago. Prior to that, the Local 306 General Fund was able to absorb all IA per capita increases. The General Fund can no longer do so.
>
> "Starting January 1, 1997, dues will be 3½% of straight time earnings plus the new basic dues of $34.00 per quarter which includes the new IA per capita tax increase" (emphasis supplied).[7]

A month before the aforesaid letter was forwarded to the membership, specifically, at **Local 306**'s membership meeting of November 1996, **Brother Merrick** put forth a proposal to amend the (subsequently) defeated constitutional amendment put forth by **Local 306** to raise the "percentage dues". Said proposal provided a legitimate mechanism to harmonize **Local 306**'s basic dues component of Thirty Dollars ($30) with the IA's per capita tax.

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[5] Id., Exhibits 9 through 19 and 21.

[6] True copies of the last three [3] ballots forwarded to the members are appended hereto as **Exhibits 26-A through 26-C**.

[7] This letter is appended hereto as **Exhibit 27**.

Brother Merrick's amendment to the amendment passed, but **Local 306**'s President, **Steve D'Inzillo**, in derogation of said office, and in contravention of Article V, Section 1, first and third paragraphs of **Local 306**'s Constitution[8], commandeered the meeting, spoke negatively on the subject of **Brother Merrick**'s amendment and invalidated same in a manner contrary to Roberts Rules of Order and also in contravention of Section 19 of **Local 306**'s By Laws[9].

To compound the injury, **Appellees** disenfranchised **Brothers Merrick and Howard** in the last two (2) successive constitutional amendment votes held in March and April of 1997.[10]

This appeal was brought in response to the letter, dated July 7, 1997, that **Appellees** forwarded **Brothers Merrick and Howard** respectively, which, inter alia, threatened their "automatic[]" expulsion if payment of the "pass-along" per- capita-tax-as-dues was not forthcoming in ten (10) days in addition to a "reinstatement fee" Five Hundred Dollars ($500).[11] While **Appellees** modified the "automatic" expulsion to "subject to expulsion" in a subsequent letter to **Brother Merrick**[12], **Appellees**' original threat has just recently been restored as evidenced in two (2) correspondence just received today (September 8th) by **Brothers Merrick and Howard**).[13]

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[8] The first paragraph provides in pertinent part that "[i]t shall be the duties of the President to preside at all meetings of the Union, to preserve order therein, and enforce due observance of the laws...". The third paragraph provides in pertinent part: "He shall not make or second any motion." *See* Appeal, Exhibit 3, p. 12.

[9] Section 19 provides: "Roberts Rules of Order shall be the authority by which the conduct of the meetings of this Union shall be conducted, except as herein provided". *See* Appeal, id., p. 41.

[10] *See* Appeal, Exhibit 19, for a memorialization of the first such disenfranchisement and Exhibit 21 for a memorialization of both disenfranchisements.

[11] *See* footnote 1, above, p. 1.

[12] *See* Exhibit 22 attached to **Brother Merrick**'s letter on behalf of **Appellants**, dated July 21, 1997, in reply to **Appellees**' answer.

[13] These letters are appended hereto as **Exhibits 28-A & 28-B**, respectively.

Notwithstanding **Brother President Short**'s Determination which held the IA Constitution "does not allow a Local to consider work assessments as a factor in determining quarterly dues", **Appellees**, in their most recent letter to the members, dated September 4, 1997 - while noticing them of said Determination and actually enclosing a true copy thereof - proceed to solicit those members employed as theatre-projectionists who are not on dues check-off to "remember to provide [their] pay stubs with [their] dues calculations" (emphasis supplied).[14] In other words, **Appellees** want to have their cake and eat it too, and are about to engorge themselves in defiance of **Brother President Short**'s Determination: **Appellees** now are prepared to feast on the Thirty-Seven Dollars ($37) and the three-and-one half percent (3½%) from each and every member employed as a theatre-projectionist and they are about to expel the **Appellants** who object to their gluttony and who refuse to give them their unjust dues.

STATEMENT OF THE ISSUES & DISCUSSION

Appellants make this appeal for the following reasons:

1. **Brother President Short's "opinion [that] there is no merit to [Appellants'] assertion that Local 306 is improperly calculating how the work assessment should be applied" inasmuch as "[t]he Local is entitled to place reasonable interpretations on [sic] its own Constitution" is in error on the basis that Local 306's "interpretation" of its Constitution be both unreasonable and in contravention of its own historical practice of calculating the "basic weekly wages" of its members.**

Appellants, both in their appeal and reply to **Appellees**' answer thereto, listed the significant flaws in **Appellees**' "Resolution" and "clarifications" thereon, which it used to calculate the members' dues. They merit reiteration here:

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[14] This letter is appended hereto as **Exhibit 29**.

Firstly, assessing the dues on "straight-time pay on each payroll sheet" rather on **Local 306** Constitution's "basic weekly wages" (which by pattern and practice, historically tracked the "operating hours" as delineated in Schedule A of the present CBAs and/or Schedule B theatre cards of the prior CBAs, wherefrom **Local 306** culled the information it recorded on each theatre-projectionist member's job referral ["yellow work"] slip) allows for a hidden and unarticulated increase in such members' dues. For instance, under the present CBAs, overtime hours between 8 a.m. and 2 a.m.are to be paid at straight-time rates. Such time is undifferentiated by major employers as "overtime". Moreover, certain additional compensation, such as "prep-time", i.e. the half-hour before operating hours commence, is likewise paid at straight-time rates, and is, under **Local 306**'s post facto "clarifications", assessed for dues (when it had not been since August 1993 when the present CBAs were executed). Thus **Appellees**, by discontinuing the historic practice of sending dues bills to the members, by their failing to issue new job referral slips to the members which recited the "basic weekly wages" of the theatres, by their "encouraging" members to elect dues check-off (to avoid delinquency because of lack of notice as a consequence of the discontinuance of billing), and by major employers making no distinction on their payrolls between straight-time hours paid on "basic weekly wages" and "prep-time" or such other contractual overtime paid at straight-time rates, become the beneficiaries of a hidden windfall of additional dues monies.

Secondly, the CBAs (with their varying terms) cannot dictate nor control the protocol in the calculation of the assessment dues. The CBAs govern the relationship and obligations between employees and employers. **Local 306**'s Constitution, on the other hand, governs the relationship between it and its members, and Article VII, Section 1, as amended, articulates the dues structure.[15]

Thirdly, **Local 306**'s Constitution cannot be amended by a "Resolution" (as are the By-Laws), but rather by a Constitutional amendment which requires two (2) readings at two (2) consecutive monthly membership meetings and two-thirds (2/3) vote by secret-

[15] Id.,Exhibit 4, last page and Exhibit 7.

mail ballot of the entire voting membership[16] (as opposed to an open vote of the attending members at a given membership meeting). Thus, even if the "Resolution" - defective notice notwithstanding - were passed unanimously at the April 10, 1996 membership meeting, it still would have been Constitutionally infirm.

Fourthly, Article VII, Section 1, as amended, of **Local 306**'s Constitution[17], specifically states that Thirty Dollars ($30) be the basic quarterly component of dues. Yet an additional Two Dollars ($2) were "passed-along" to **Local 306**'s members via the "Resolution" and Two Dollars ($2) more were likewise "passed-along" to the members as memorialized in **Appellees**' letter.[18] And now, as a result of **Brother President's Short**'s Determination, another Three Dollars ($3) will be passed-along to its members.[19]

Lastly, said "Resolution" and its "clarifications" violated Section 101(a)(3)(A)(i) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411(a)(3)(A)(i), for reasons amplified below in section "4".

While "Local [306] is entitled to place reasonable interpretations on [sic] its own Constitution",[20] it is not entitled to make over its Constitution by fiat and subterfuge, which it has done in this controversy and which **Brother President Short** chooses to ignore.[21]

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[16] Id.,Article XI, fourth page.

[17] *See* footnote 15, above, this page.

[18] *See* footnote 7, above, p. 4.

[19] *See* footnote 14, above, p. 5.

[20] *See* footnote 1, above, p. 1.

[21] Unfortunately, **Brother President Short**'s stance comes as no surprise to **Appellants** for when the "Resolution" was appealed initially to him by **Sister Betty** on April 19, 1996, he dead-lettered it with nary an acknowledgement of receipt.

2. **Brother President Short's characterization of the percentage component of Local 306's dues as a "work assessment" is not only fraught with consequences inimical to the Local's and the IA's interests but itself is an unreasonable interpretation of Local 306's Constitution. Furthermore, his holding that IA Constitution, Article Nineteen, Section 14 "does not allow a Local to consider work assessments as a factor in determining quarterly dues" not only obfuscates rather than resolves the issues raised in this controversy, it is without foundation.**

Article VII, Section 1, as amended, of **Local 306**'s Constitution[22], "rescinded" the "two per-cent [work] assessment" then in effect and substituted "3 per cent of [the affected members'] basic weekly earnings" - later increased to 3½ per cent - *"plus"* the basic component of "$30.00" to be the "quarterly dues"[23] (emphasis supplied). This "3½ per cent", which **Brother President Short** characterized as a "work assessment", was found by him to be in contravention of Article Nineteen, Section 14 of the IA Constitution. **Brother President Short** held the latter section "does *not allow* a Local to consider work assessments as a factor in determining quarterly dues" (emphasis supplied).[24]

Hence that "assessment" component of the quarterly dues is a nullity. It has no force and effect outside of the Constitution wherefrom it was excised. **Appellees** therefore can no longer lawfully collect the disallowed 3½% dues component from **Local 306**'s members. If **Local 306** be in need of such revenues, a resolution for a "work assessment" must be promulgated and voted on by its membership, pursuant to its By-Laws[25] and the requirements of Section 101 (a)(3)(A) of the Labor Management and Reporting Act (hereinafter "LMRDA"), 29 U.S.C. § 411

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[22] *See* footnote 15, above, p. 8.

[23] Appeal, Exhibit 4, Paragraphs "1" and "2, and Exhibit 7, last paragraph.

[24] *See* footnote 1, above, p. 1.

[25] *See* footnote 3, above, p. 2.

(a)(3)(A)[26]. Whether **Local 306** could or would be able to realize the passage of such an assessment in a month's time, when its members' quarterly dues will be due, is highly unlikely. **Brother President Short**'s determination will therefore have a catastrophic effect upon **Local 306**'s fiscal solvency, which surely was not the intendment of **Appellants**. He destroys the village in order to save it.[27]

That "no mention is made of a work assessment" in Article Nineteen, Section 14 of the IA Constitution should not debar any affiliated Local Union from utilizing such an assessment to meet the compulsory minimum dues it is mandated to collect under that section. In fact, although "courts have not arrived at generally accepted definitions of 'rates of dues' [under the aforesaid section of the LMRDA, a]t least [two] are possible: The first defines the term as an absolute amount... A second possible definition... is as *a percentage of union member's earnings. Under this definition, a by-law provid[es] that dues are to be assessed as a constant percentage of members' monthly or quarterly compensation...*", *Burroughs v. Operating Engineer Local Union No. 3*, 686 F2.d 723, 728 (9th Cir.1982)(emphasis supplied). If the second definition meets muster with federal law, surely it can fall within the ambit of permissibility under the IA Constitution.

It is therefore plain to see that **Brother President Short**'s misguided and Procrustean interpretation of the IA Constitution could not have been "made in conformity with the spirit and substance of the Constitution and By-Laws and with regard to the equities of the circumstances"[28]. It merits reversal by the Board.

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[26] *See* Section 4, below, for a complete discussion of the requirements of this statute.

[27] **Appellees** have circumvented this dilemma by just ignoring the holding of **Brother President Short**. They have instructed the members to continue to "provide [their] pay stubs with [their] dues calculations", i.e. the "work assessment" survives as a component of dues, for what is there to "calculate" above the Thirty-Seven Dollars ($37) quarterly dues? *See* footnote 14, above, p. 5.

[28] IA Constitution (62nd Edition, 1995), Article Seven, Section 6, second paragraph, p. 14.

3. **Brother President Short's Determination does not address, let alone resolve, the key issue of this controversy, that is, whether a affiliated sister local can pass-along to its members under the guise of a quarterly-dues increase, the per-capita tax the IA levies upon said affiliate, when the quarterly dues being paid by the members of said affiliate more than adequately meet the minimum dues requirements under Article Nineteen, Section 14 of the IA Constitution.**

In his letter dated May 7, 1996 to **Brothers Merrick and Howard, Brother Michael** rationalized **Local 306**'s "pass-along" by citing the IA "Convention action [whereby] increases in per-capita [tax] due the International are passed along in the quarterly dues due and owing the member".[29]

Brother Michael's representation was - and remains - inconsistent with the IA Constitution:

Article Fourteen, Section 1 thereof states that "every affiliated local union shall be required to purchase at the appropriate rate not less than one stamp per quarter for each and every member carried on its membership roll".

Article Nineteen, Section 12 thereof states that "on the first day of each quarter each affiliated local union shall purchase from the General Secretary-Treasurer of the [International] Alliance one Thirty-Dollar ($30.00) Quarterly Receipt stamp...for each member of the local union whose name appears on the roster of membership of the current quarter".

It is evident from the two above-recited sections that the per capita tax be a direct tax levied by the IA upon each and every affiliated local union. It is not a direct tax to be levied upon each member of the affiliated union.

In a correspondence dated September 5, 1996 to **Brothers Merrick and Howard**, **Brother Joel** proffered a different

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[29] Appeal, Exhibit 10.

rationale, inharmonious to **Brother Michael**'s: "In the past Local 306 was able to absorb Convention per Capita [sic] tax increases, although we were in technical violation of the IA Constitution. In recent years we were unable to continue this practice. Once finances became tight and as the IA increased their [sic] per capita tax we had to pass on the same $2.00 increase instead of absorbing it as in the past".[30]

(**Brother Joel** forgets **Local 306**'s history. A decade earlier **Local 306** passed along the IA's per capita tax increase to its members but immediately refunded its members therewith, thus mooting the controversy it has since resurrected. Its rationale then was that the "temporary 1% assessment" adopted by its members permitted the refund, and that the members' "adopt[ion of] the proposed Constitutional Amendment to raise dues by ½% [i.e. to enable **Local 306** to increase its percentage collection of the members' basic weekly earnings from three percent (3%) to three-and-one-half percent (3½%) which proposed amendment the members did adopt, will cease] the 1% assessment...and we will at least put Local 306 on a sound pay as you go basis".[31]

(Presently, one need only look at the actual language of Article VII, Section 1, as amended, of **Local 306**'s Constitution to see that the "two per cent [work] assessment [was] rescinded" {paragraph 1}, and replaced by a dues percentage of three (3) and then three-and-one half percent {paragraph 2} and last paragraph.[32]).

Brother Joel continued: "This per capita tax is for the sole purpose of paying for your stamps which is affixed in your dues

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[30] Id., Exhibit 13. This rationale is similar to the one proffered in **Appellees**' most recent correspondence to **Local 306**'s members. *See* footnote 14, above, p. 5.

[31] *See* Exhibit 24-A attached to **Brother Merrick**'s letter on behalf of **Appellants**, dated July 29, 1997 in response to **Brother President Short**'s inquiry.

[32] Appeal, Exhibit 7.

book quarterly."[33] This statement flies in the face of Article Nineteen, Section 14 of the IA Constitution which states: "It shall be compulsory for each affiliated local union of the [International] Alliance to collect form each individual member thereof quarterly dues of not less than Five Dollars ($5.00) over and above the amount of the per capita tax, causing the proper receipt stamps to be affixed to the dues book of the individual member as evidence of such payment".

From the plain language of the above-recited section, it is patently clear that it is the member's payment of his quarterly dues (which amount, de minimus, should not be less than Five Dollars [$5] over the amount of the per capita tax the local affiliated union pays directly to the IA for every member listed on the local's roster) that causes his book to be stamped, not the local's payment of the per capita tax, which purchases the stamps from the IA to be so affixed.

Applying the above section to **Local 306**'s members who are employed as theatre-projectionists, their payment of three-and-one-half percent (3½%) of their basic weekly wages as part of their quarterly dues more than meets the "not-less-than-Five-Dollars ($5.00)" requirement. To "pass on" an additional Two Dollars ($2), Four Dollars ($4) and now Five Dollars ($5) is unauthorized by the IA Constitution, in contravention of **Local 306**'s Constitution and - as we shall demonstrate below - is in violation of federal law. Both **Appellees**' arguments and rationalizations and **Brother President Short**'s "interpretation" are faulty, imprecise and cannot withstand rational scrutiny.

Furthermore, **Appellants**' position is supported by virtually all reported caselaw on the subject:

> "It is necessary also to again refer to the label which...**[Local 306]** has placed upon this increase of dues as a 'per capita tax' which...was not intended by Congress to fall within the category of an increase of dues. A true 'per capita tax' is one which is levied by a parent labor

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[33] Id., Exhibit 13.

> organization upon a *local* union with which it is affiliated. It is not a tax levied by a parent or a coordinated union directly upon the *members* of it affiliated locals. It is paid to the parent body or authorized coordinated union from the dues collected by the local from its members and generally related to the numerical strength of the local. But it is not an additional sum charged directly to the member and it is not used as a subterfuge to increase dues (citations omitted)...The assessment does not fall within the definition of a true 'per capita tax"... [T]he term is simply another label for dues which falls within the proscription of Section 101(a)(3) [of the LMRDA, 29 U.S.C. § 411 (a)(3)]."

King v. Randazzo, 234 F.Supp. 388, 394 (E.D.N.Y.1964), *aff'd* 346 F.2d 307 (2d Cir.1965) (emphasis original). *See also Ranes v. Office Employees International Union, Local No. 28*, 317 F.2d 915, 918, fn. 5 (7th Cir.1963).

The court in *King* formulated a "financial burden test" as a method of distinguishing between "true" per capita taxes and disguised dues increases:

> "Strictly speaking, the word 'increase', as used in connection with the dues, means an enlargement or augmentation of the present dues as distinguished from the imposition of a new type of assessment by a different or affiliated organization. But the effect of this assessment, as far as the members of the Local are concerned...is an addition to the present dues paid by them. Whether there has been an increase in dues must be determined not by who imposed the exaction but by the nature of the imposition and the direct effect upon the financial burden of the individual members..."

King, 234 F.Supp at 394.

In this controversy it undisputed that, regardless of whether the IA chose to levy an increased per capita assessment on its sister affiliates, the dollar amount of that per capita was directly

passed along by its affiliate, **Local 306**, to its members in the form of a dues increase, i.e. the dollar amount of the quarterly dues payable by **Local 306**'s members was altered. Therefore, giving words their plain meaning, the IA's imposition of its additional per capita had an effect upon the financial burdens of the individual members of **Local 306**. *See also Seybert v. Lowen*, 623 F.2d 780, 785 (2d Cir.1980)

As **Brother Merrick** stated in his letter, dated July 21, 1997, in reply to **Appellees**' answer to the Appeal, "[**Appellants**] have never questioned the International's authority to raise its per capita tax upon the affiliated local unions. What we have vigorously opposed is the unlawful direct pass-along of said increase to the members of an affiliated local, in the guise of conforming to the International's requirement of minimum local dues, when [**Local 306**'s] collection.... [as part of] its quarterly dues, of three and one-half [3½] percent of the basic weekly earnings of its members, more than meets the International's requirement [of minimum dues in Article Nineteen, Section 14 of its Constitution]" (emphasis supplied).

It is baffling how **Brother President Short** can "see" invisible Constitutional prohibitions against "work assessments as a factor in determining quarterly dues" but can be blind to the actual provisions of the IA Constitution which clearly define the per capita tax as direct levy upon the affiliated local unions - not it members.[34]

It is therefore beyond peradventure that **Appellees**' direct "pass-along" of the IA's per capita tax increases to its members, both in its initial pass-along via the dues "Resolution"[35] and by the successive "pass along" in its letters to **Local 306**'s members[36] were not a "true per capita tax" but "a subterfuge [by **Appellees**] to increase dues...which falls within the proscription of Section 101

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[34] IA Constitution, Article Fourteen, Section 1, p. 25 and Article Nineteen, Section 12, p. 41.

[35] Appeal, Exhibit 6.

[36] *See* **Exhibits 27 & 29**, appended hereto.

(a)(3) [of the LMRDA and the IA Constitution]", *King*, 234 F.Supp. at 394.

4. President Brother Short again dead letters consideration of Local 306's Dues Resolution that was the genesis of the controversy. The presentation of said Resolution was not only in contravention of Local 306's Constitution and By-Laws but of federal law, to wit, Section 101(a)(3)(A) of the Labor-Management Reporting and Disclosure Act ("LMRDA").

Section 103(a)(3)(A) of the LMRDA, 29 U.S.C. § 411(a)(3)(A) provides in pertinent part:

> "3. *Dues...and assessments.* --Except in the case of...international labor organizations, the rates of dues...payable by members of any labor organization..., shall not be increased, and no general or special assessment shall be levied upon such members, except--
>
> > "(A) in the case of a local labor organization (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot[.]"

"By requiring a majority vote of the union membership for any increase in the "rates of dues", section 101(a)(3) is a crucial ingredient in the amalgam of rights intended by Congress to promote real union democracy. The clear purpose of section 101(a)(3), therefore, is to curb the potential for autocratic and unrepresentative rule of union officers, *see Rosario v. Amalgamated Ladies' Garment Cutters' Union, Local 10*, 605 F.2d 1228, 1239 (2d Cir.1979), *cert.denied*, 446 U.S. 919, 100 S.Ct. 1853, 64 L.Ed.2d 273 (1980), by preventing the leadership of a union from imposing arbitrary financial exactions

> unilaterally on its members (citation omitted); *King v. Randazzo*, 346 F.2d 307, 309 (2d Cir.1965). Section 101(a)(3) was designed to vest control over increases in rates of dues in the union members, not the union management..."

Burroughs, 686 F.2d at 728 (9th Cir.1982).

It is manifestly apparent from the above that the "clear purpose" of the LMRDA was trampled by **Local 306**'s Dues "Resolution".

Firstly, the voting on said "Resolution" was conducted by voice vote, not secret ballot;

Secondly, no attempt was made at **Local 306**'s membership meeting where said "Resolution" was voted on to ascertain whether the assembled members voting were in good standing; and

Thirdly, the notice of the vote on said "Resolution" was in violation of Section 20 of **Local 306**'s By-Laws.[37]

The fact, therefore, that **Local 306** contends that the "Resolution" "was adopted overwhelmingly"[38], implying the absence of any prejudice resulting from the standing vote, is immaterial.

> "...Section 411(a)(3) requires in clear and unmistakable language a secret ballot for any dues increase. A requirement of prejudice is nowhere mentioned... As a remedial statute, it is not to be read narrowly so as to derogate any of the rights granted by Congress to American working men. Where no requirement of prejudice exists, none should be read in. The requirement of a secret ballot is an absolute protection

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[37] *See* footnote 3, above, p. 2.

[38] Appeal, Exhibit 6.

for the working man, and any vote that dispenses with it is invalid as repugnant to the statute. *See King v. Randazzo*, 346 F.2d 307 (2d Cir.1965).

White v. King, 319 F.Supp. 122, 124-125 (E.D.La.1970).

5. President Brother Short casts a blind eye towards the acts and omissions of Appellees by their dues collection practices and by their unlawful disenfranchisement of Appellants.

Appellants submit that they have faithfully met their financial obligations pursuant to Article VII, Section 1, as amended and as altered by **Brother President Short**'s Determination; for if the "work assessment" collected by the **Appellees** be disallowed under the IA Constitution, then **Appellants** - and for that matter all of their brothers and sisters working as theatre projectionists - have each met the IA's minimum dues requirement over five-hundred-fold. As such, **Appellants** have also fulfilled their financial obligations pursuant to Article Twenty-One, Section 12 of the IA Constitution.[39]

Notwithstanding the fact that **Brother Merrick and Howard**'s dues monies were accepted by **Appellees**, for the past three (3) quarters **Appellees** have failed to return their membership books with the proper receipt stamps affixed thereon. **Appellees** are therefor in violation of Article Nineteen, Section 14 of the IA Constitution in failing to "caus[e] the proper receipt stamps to be affixed to the dues book of the individual member as evidence of such payment of [quarterly dues of not less than Five-Dollars ($5.00) over and above the amount of the per-capita tax]".[40]

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[39] IA Constitution, Article Twenty-One, Section 12, p. 49, states in pertinent part: "Members of this Alliance shall be obligated to meet the financial obligations properly imposed upon them by their respective local unions" (emphasis supplied).

[40] Id., Article Nineteen, Section 14, p. 41-42.

The inconsistent dues collection by **Appellees** of those members who have elected Dues Check-Off and those who have opted-out of such collection is rife with abuse, as delineated above.[41]

And as further injury, the deliberate disenfranchisements of **Appellants** in two (2) successive ballotings are in contravention of Article VII, Section 3 of **Local 306**'s Constitution which states in its entirety that "[t]o be in good standing a member must be paid up as prescribed in Section one (1) of this Article". Inasmuch as **Appellants**' dues payments are, and have always been, in conformity with Section One thereof, for them to be disenfranchised summarily and without notice by **Appellees** is a patent violation of said Constitution, and an infringement of the rights guaranteed to union members under Section 101(a)(1) of the LMRDA, 29 U.S.C. § 411(a)(1), which provides in pertinent part that "[e]very member of a labor organization shall have equal rights and privileges within such organization...to vote in elections and referendums of the labor organizations...".

6. **Lastly, President Brother Short's disregard of the threat of expulsion from membership of Local 306 given to Appellants by Brother Joel when he "see[s] no reason to grant a stay of *any action* Local 306 might take *to enforce* its current dues structure" (emphasis supplied), is more than blithe. He, in fact, has intentionally and purposefully given Appellees the green light to convert that threat into an act and to continue their abuses against the membership.**

Notwithstanding **Appellants**' respectful contention that **Brother President Short**'s Determination be in error, we respect the protocol of the IA Constitution which mandates that the President's "decisions [interpreting the IA Constitution]...shall be binding upon all individual members and affiliated local unions of the Alliance until amended or reversed...".[42] Unfortunately,

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[41] *See* Section 1, above, pp. 6-8.

[42] IA Constitution, id., first paragraph.

Appellees afford no such respect as they brazenly disregard the indisputable fact that **Brother President Short**'s Determination expressly found that the IA Constitution "does not allow a Local to consider work assessments as a factor in determining quarterly dues" and proceed to instruct the members of **Local 306** - in the same breath that they notice them of the Determination - to "provide their pay stubs with [their] dues calculations". Query: What is there to "calculate" over and above the Thirty-Seven Dollars ($37) quarterly dues which survive after the "work assessment" of three-and-one-half percent (3½%) has been "disallowed" by the IA Constitution?

In reality, **Appellants** are not the ones who are delinquent, but rather **Appellees** for they knowingly did not pay the proper IA per capita tax "[a]s the appellants point out".[43] **Brother Michael**, in his letter to **Brothers Merrick and Howard**, dated May 7, 1996, admitted that based upon Article Nineteen, Section 14 of the IA Constitution, "Local 306's quarterly dues should have [then] been $35. In checking with International President Short, I understand that the Local is in violation of the IA Constitution".[44]

Of course, **Brother Michael** and **Appellees** make the same facile mistake equating the IA's per capita with **Local 306**'s basic dues component. Clearly from the arguments raised and caselaw cited hereinabove, they are not synonymous.

Nevertheless, accepting on its face the validity of **Brother President Short**'s holding, **Appellees** were under an obligation in 1996 to collect Thirty-Five Dollars ($35) as basic dues from each of its members, and, beginning January 1, 1997, to collect Thirty-Seven Dollars ($37) as basic dues from them. Query: Is **Brother Michael**'s "understand[ing]" an admission of **Appellees**' malfeasance? If so, who are the more egregious offenders: **Appellants** who dutifully paid to **Appellees** their Constitutional dues (which, incorporating the three-and one-half percent (3½%)

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[43] *See* footnote 1, above, p. 1.

[44] *See* footnote 28, above, p. 12.

of their basic weekly earnings, more than satisfied the IA's minimum requirements of an affiliated local union's quarterly dues), or **Appellees** who knowingly and purposefully did not collect the rightful dues from the members?

And what is the outcome of all this? The sinners are going to cast out those who are without sin. **Brothers Merrick and Howard** are due to be expelled from **Local 306** this week (September 12th). We have been anointed as the scapegoats for **Appellees'** duplicity and subterfuge.

Brother President Short "[w]hile [he] ha[s] no desire to impose additional financial burdens on the members of Local 306,...cannot unilaterally change the I.A. Constitution. Quarterly dues in Local 306 should therefore be raised to $37.00 per quarter."[45] But **Local 306**'s dues already far exceed the IA's minimum requirement. To continue the Biblical analogy, **Brother President Short**, like Pontius Pilate, <u>really</u> <u>doesn't</u> want to do what he's about to do but - he has no choice; and like the Roman consul, he makes the wrong decision.

WHEREFORE, **Appellants** request that the General Executive Board:

A. Reverse **Brother President Short**'s interpretation of the IA Constitution that it "does not allow a Local to consider work assessments as a factor in determining quarterly dues" as unreasonable.

B. Order **Appellees** to provide forthwith **Appellants** and to every member of **Local 306** an up-to-date version of **Local 306**'s Constitution and By-Laws, including any and all amendments thereto since its last official printing in 1972.

C. Investigate the acts and omissions of **Brother Joel**.

D. Declare as unconstitutional the direct taxation of **Local 306**'s members of the increase in the IA's per capita tax, which

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[45] *See* footnote 1, p. 1.

Local 306 has exacted upon its members under the guise of a "pass-along" levy.

E. Order **Brother Joel** to uphold his Constitutional duty and collect from **Local 306**'s members, the dues as defined and permitted in its Constitution.

F. Order **Appellees** not to discriminate against those members who elect not to enroll in the Dues Check-Off system.

G. Order **Appellees** to re-institute its practice of sending quarterly dues bills to its members not enrolled in the Dues Check-Off system.

H. Order **Appellees** to correct the collection of dues under the Dues Check-Off system so as to conform to the provisions of Article VII, Section 1 of **Local 306**'s Constitution, as amended.

I. Order that **Appellees**' computation of the three-and-one-half percent (3½%) "dues percentage" shall be derived from "the earnings of members employed... calculated on the salary that the steady job pays", pursuant to Article VII, Section 1 of **Local 306**'s Constitution, as amended, which historically has been the "basic weekly wages" as reflected on the job referral ("yellow work") slips. Said "basic weekly wages" shall be computed exclusive of overtime, "prep-time", make-up, break-down or move-over compensation, vacation or sick-time differential or such other contractual compensation paid at straight-time rates.

J. Order **Appellees** to issue to each and every employed theatre-projectionist member of **Local 306** an updated job referral ("yellow work") slip, pursuant to Article V, Section 5 of **Local 306**'s Constitution.

Dated: September 8, 1997

/s/ Brother Merrick J. Brodsky
/s/ Brother Howard K. Brodsky
/s/ Sister Elizabeth M. Gross

APPENDIX J

Respondent Local Union Secretary-Treasurer Joel Deitch's Summons of Petitioners, 21 November 1997

UNION LOCAL 306
MOVING PICTURE PROJECTIONISTS, VIDEO TECHNICIANS AND ALLIED CRAFTS
723 7th Avenue, 11th Floor
New York, New York 10019

Regular & Certified — November 21, 1997

Merrick J. Brodsky
2790 Bragg Street, Suite 207
Sheepshead Bay, Brooklyn, NY 11235-1141

Howard Brodsky
1701 Morlot Avenue
Fairlawn, NJ 07310-2103

Dear Brothers:

You are requested to appear before the Executive Board on Tuesday December 9, 1997 at 10.30 AM.

Your appearance is required to discuss your dues delinquency and your expulsion from Local 306.

Please arrange your schedules to allow for this appearance.

/s/ Joel Deitch
Secretary-Treasurer

JD:jv
File: brodskyb.doc

APPENDIX K

Respondent International Union President Thomas C. Short's Clarification of his Determination in Petitioners' and Elizabeth Gross' Internal Appeal, "10 October 1997"

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA
1515 Broadway
New York, New York 10036-5741

OFFICE OF THE PRESIDENT

October 10, 1997

Mr. Merrick Jason Brodsky
2790 Bragg Street, Suite 207
Brooklyn, NY 11235-1141

Dear Brother Brodsky:

This will acknowledge receipt of your appeal dated September 11, 1997 to the General Executive Board. It is noted that you have signed the appeal of behalf of yourself as well as co-appellants, Howard K. Brodsky and Elizabeth M. Gross.

With regard to said appeal to the General Executive Board, just to set the record straight, my decision was never intended to invalidate the so-called work assessment of three-and one half percent (3 ½%). I simply meant to say that an assessment cannot be used as an offset to quarterly dues.

The International Constitution obviously contemplates that some locals will have both quarterly dues and percentage work dues or assessments.

You will be notified by the office of the General Secretary-Treasurer as to the time and date your appeal will be brought before the General Executive Board as soon as that information becomes available.

Fraternally,
/s/ Thomas Short
International President

TCS:dr

cc: I.A.T.S.E. Local No. 306

APPENDIX L

Petitioners' Reply to
Respondent International Union President
Thomas C. Short's Clarification of his Determination,
11 December 1997

Merrick Jason Brodsky
2790 Bragg Street - Suite 207
Sheepshead Bay, Brooklyn
New York 11235-1141
Telephone: 718-332-5175 Facsimile: 718-615-1864
E-mail: Duo-Artisan@worldnet.att.com

Howard Keith Brodsky
1701 Morlot Avenue
Fair Lawn, New Jersey 07410-2103
Telephone: 201-796-3647

Thursday, December 11, 1997

Thomas C. Short, International President
I.A.T.S.E.
1515 Broadway, Suite 601
New York, New York 10036-5741

Re: Appeal File No. X-3790

Dear Brother President Short:

On Tuesday, December 9, 1997, the undersigned appeared before a Committee of the Executive Board of Union Local 306, Motion Picture Projectionists, et al. (hereinafter "the Union"), pursuant to a correspondence issued by the Union's Secretary-Treasurer Joel Deitch, dated November 21, 1997. Said correspondence, attached hereto as **Exhibit A**, "required [our

appearance] to discuss []our dues delinquency and []our expulsion from Local 306, which is the subject of the above-referenced appeal.

Upon our arrival at the Union's offices, we were greeted by Brother Deitch who thereupon presented us with a correspondence from you addressed to Merrick Jason Brodsky (hereinafter "Brother Merrick"), dated October 10, 1997. Said correspondence is attached hereto as **Exhibit B**. Brother Deitch voluntarily represented that he "ha[d] just received this from the IA this morning". This was the first time any of the undersigned saw this correspondence notwithstanding that the addressee on the correspondence be one of the undersigned.

This has not been the first time that a pre-dated correspondence to an appellant has emanated from your office and has debuted in the files of the appellee Union, its apparent intent being to manufacture *post-facto* "facts" to buttress the Union's position and/or to dilute the grievant's/appellant's position(s). I refer to the instance of co-appellant Sister Elizabeth Gross who was the non-recipient of a correspondence from you which similarly debuted in the Union's file and was proffered *deus ex machina* to negate the Union's violation of the thirty (30) day Constitutional time limitation in her internal trial process.

And now, it is more than coincidence that, with all the personal and professional correspondence Brother Merrick receives, the post office has presumably "failed" again by the non-delivery of the "October 10th" correspondence.

With all due and diminishing respect, Brother President, said correspondence though designed "to set the record straight" fails in its purported intendment both procedurally and substantively.

Procedurally, unlike the civil practice and procedure in the judicial forum, the International Constitution provides no opportunity for re-argument, renewal or reconsideration prior to or during the pendency of an appeal to the higher tribunal.

Substantively, your "clarification" only serves to obfuscate the issues of our appeal. The Union's members do not pay a work assessment, Brother President; we pay a dues percentage - and said percentage is defined to be a component of our quarterly dues by the Union's Constitution. Your "offset" argument, as your Determination, is faulty, imprecise - and without merit.

Whatmore, your correspondence is mere surplusage and as such - and because there is no Constitutional authority for you to "clarify" a matter put before the higher tribunal - the arguments put forth therein should and must not be given any probative value by the higher tribunal.

Kindly take notice, Brother President, that the undersigned have been expelled from the Union. Thrice we asked you during the course of our appeal to stay that anticipated act by the Union. Your deafening silence to our pleas was succeeded by your Determination wherein you "s[a]w no reason to grant a stay of any action Local 306 might take to enforce its current dues structure".

Thereafter, the undersigned beseeched you again, in our letter to you, dated September 11, 1997, attached hereto as **Exhibit C** - which was accompanied by a courtesy copy of our appeal of your Determination to the General Executive Board - that you "stay any...actions...[the Union] could take [i.e. our then imminent expulsion which was referenced in the aforesaid letter] against [us] during the pendency of [the] appeal". Your reticence reaffirmed the final sentence of your Determination, quoted above, and gave the Union the green light to expel us.

We have suffered injury by our expulsion. Our good faith effort to resolve this matter "in house" has been met with both bad faith by your aforementioned act and omissions and by the calumny of your mentor - as you have called him - the President and Chairman of the Union's Executive Board, Steve D'Inzillo. Mr. D'Inzillo branded us "evil" and "anti-union" whilst chairing the Executive Board's Committee on December 9th. He proceeded to restrict our efforts to explain our position during the Committee session and, as Chair, launched a personal attack on Brother Merrick as "a lawyer who still has to work as a projectionist".

(Query: Did Mr. D'Inzillo intend to denigrate Brother Merrick in his chosen profession or his chosen craft, the latter which Mr. D'Inzillo has sworn to represent favorably?) Thereat your mentor also indicated to the undersigned that he has "several tricks up [his] sleeves too" to impart to us "shortly".

We are at the banks of the Rubicon, Brother President. You are hereby noticed that when we cross it to the judicial side (as all roads back have been blocked) we shall be personally inviting you and the International Alliance in our journey. Your mentor, likewise, shall be an invitee. (He will be afforded an opportunity to revise his evaluation of Brother Merrick's professional ability.) Nevertheless, we remain, though unlawfully expelled,

Fraternally yours,
/s/ Merrick Jason Brodsky
/s/ Howard Keith Brodsky

Enclosures

cc: Michael C. Proscia, General Secretary-Treasurer
Joel Deitch, Secretary-Treasurer, Union Local 306

APPENDIX M

Respondent International Union General Secretary-Treasurer Michael W. Proscia's Notice to Petitioners and Elizabeth Gross, 9 January 1998

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA
1515 Broadway
New York, New York 10036-5741

January 9, 1998

Mr. Merrick Jason Brodsky
2790 Bragg Street, Suite 207
Sheepshead Bay
Brooklyn, NY 11235-1141

Re: Appeal File No. X3790

Dear Brother Brodsky:

Pursuant to President Short's letter dated October 10, 1997, a copy of which is enclosed, this is to notify you that your appeal (with co-appellants Howard K. Brodsky and Elizabeth M. Gross) to the General Executive Board from a decision of the International President is scheduled to be presented before the Board on Wednesday, February 25, 1998 at 10:30AM at the Palm Springs Riviera Hotel, 16000 North Indian Canyon Drive, Palm Springs, California (Telephone: 760/327-8311).

Please advise this office if you plan to appear before the Board at the time indicated above.

Best regards,
/s/ Michael W. Proscia
General Secretary-Treasurer

MWP:mk
Enclosure
cc: Joel Deitch, Secretary.
I.A.T.S.E. Local No. 306
Howard K. Brodsky
Elizabeth M. Gross

VIA: CERTIFIED MAIL, RETURN RECEIPT REQUESTED

APPENDIX N

Petitioners' Reply to Respondent International Union General Secretary-Treasurer Michael W. Proscia's Notice, 16 January 1998

Merrick Jason Brodsky
2790 Bragg Street - Suite 207
Sheepshead Bay, Brooklyn
New York 11235-1141
Telephone: 718-332-5175 Facsimile: 718-615-1864

Howard Keith Brodsky
1701 Morlot Avenue
Fair Lawn, New Jersey 07410-2103
Telephone: 201-796-3647

Friday, January 16, 1998

Michael W. Proscia
General Secretary-Treasurer
I.A.T.S.E.
1515 Broadway, Suite 601
New York, NY 10036-5741

Re: Appeal File No. X-3790

Dear Brother Proscia:

The undersigned are in receipt of your letter, dated January 9, 1998. Your letter apparently labors under the illusion that International President Short's "October 10, 1997" letter has some valid basis in our appeal. Permit us to undo your confusion. Pursuant to the International Constitution, International President Short's original determination, dated August 11, 1997 is the subject of our appeal to the International General Executive Board.

International President Short's "October 10, 1997" letter was a back-dated document which was first delivered to the undersigned by Union Local 306's Secretary-Treasurer, Joel Deitch, on December 9, 1997 who ordered us to appear before said Union's Executive Board. Serendipitously, Brother Deitch informed us that he had received this letter by fax that very morning. On the occasion of that December Executive Board meeting, we were first informed that we were expelled from the Union Local 306 two months prior thereto - in September.

The International President's back-dated "October 10, 1997" letter has no valid basis of submission for review by the International General Executive Board in this appeal. The International Constitution does not permit the embellishment of extra-procedural surplusage in the guise of clarification by the International President where a determination has already been rendered. The undersigned have already made this clear in our correspondence to International President Short, dated December 11, 1997, a copy of which is herewith enclosed.

As International General Secretary-Treasurer, you are charged with upholding the lawful procedures of the appellate process. Therefore, the Appellants urge you to disallow the International President's back-dated "October 10, 1997" letter from consideration by the International General Executive Board. The International President made his determination in the above captioned appeal on August 11, 1997. It is therefor both procedurally improper and Constitutionally infirm for him to reverse or obfuscate that determination with any further commentary.

Fraternally,
/s/ Merrick Jason Brodsky
/s/ Howard Keith Brodsky

Enclosure

cc: Joel Deitch, Secretary-Treasurer, Union Local 306

APPENDIX O

Respondent International Union .
General Executive Board's Determination
in Petitioners' and Elizabeth Gross' Internal Appeal,
Late February 1998

APPEAL FILE NO. X-3790

M. BRODSKY ET AL. VS. LOCAL 306, NEW YORK, N.Y.

Brothers Merrick and Howard Brodsky and Sister Elizabeth Gross appealed to the General Executive Board from a determination of International President Short upholding a decision of Local 306 to pass along a dues increase by reason of an increase in per capita tax to the International as per Article Nineteen, Section 1 of the International Constitution which reads as follows:

> "It shall be compulsory for each affiliated local union of the Alliance to collect from each individual member thereof, except retired members qualifying as such under Article Fourteen, Sections 1A and 1B, quarterly dues of not less than Five Dollars ($5.00) over and above the amount of the per capita tax, causing the proper receipt stamps to be affixed to the dues books of the individual member as evidence of such payment."

Brothers Merrick and Howard Brodsky and Sister Gross also contest President Short's ruling that Local 306 has the right to pass along the quarterly dues increase and also to charge a percentage work assessment, even though, when taken together, the amount collected from some members exceeds the minimum quarterly dues required by the IA Constitution.

Appearing before the Board representing Local 306 were Brothers Steve D'Inzillo, Joel Deitch and Michael Goldberg. Brothers Merrick and Howard Brodsky and Sister Gross did not make an appearance.

Upon a review of the file, the Board voted to uphold the decision of President Short. During the deliberations, President Short and Special Representative D'Inzillo were excluded from the room.

APPENDIX P

Respondent International Union Convention's Determination in Petitioners' and Elizabeth Gross' Internal Appeal, Late July 1998

Letter of Respondent International Union General Secretary-Treasurer Proscia to Petitioners and Elizabeth Gross in their Internal Appeal, 21 August 1998

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA
1515 Broadway
New York, New York 10036-5741

August 21, 1998

Mr. Merrick Jason Brodsky
2790 Bragg Street, Ste. 207
Brooklyn, NY 11235-1141

Mr. Howard Keith Brodsky
1701 Morlot Avenue
Fair Lawn, NJ 07410-2103

Ms. Elizabeth M. Gross
771 West End Avenue, Ste. 9-A
New York, NY 10025

Re: Appeal File No. X3790

Dear Brothers Brodsky, Brodsky and Sister Gross:

Your appeal to the 63rd Triennial Convention was presented to the Grievance Committee in Toronto, Ontario, Canada, during the week of July 20-24, 1998. The Committee then reported its recommendation to the delegates at the Convention and a vote was taken on your appeal.

I enclose herewith an extract from the verbatim transcript of the Convention proceedings which sets forth the action of the Convention.

Fraternally,
/s/ Michael W. Proscia
General Secretary-Treasurer

MWP: tdg
Enc.

cc: IATSE Local 306

CERTIFIED MAIL, return receipt requested [stamped]

Report Of The Grievance and Appeals Committee, Late July 1998

COMMITTEE CO-CHAIRPERSON WOOD: The Grievance Committee convened at seven p.m. on Tuesday, July 21, 1998, in the City Hall Room of the Sheraton Centre Toronto Hotel, Toronto, Ontario, to act on appeals to the convention from decisions of the General Executive Board.

The Committee was chaired by Vice-President Rudy Napoleone and James P. Wood and Lainie Miller, Local 871, acted as Secretary of the committee. The committee consisted of 72 delegates of whom 68 were in attendance. The following appeals were considered:

APPEAL FILE NO. X-3790
MERRICK BRODSKY, HOWARD BRODSKY AND ELIZABETH GROSS vs. LOCAL 306

COMMITTEE SECRETARY MILLER: Mr. Merrick Brodsky and Mr. Howard Brodsky, who had been expelled from Local 306 for nonpayment of dues, and Sister Elizabeth Gross, appeal from a decision of International President Short which was upheld by the General Executive Board. President Short ruled that Local 306 had to increase its quarterly dues because the International per capita tax had increased. And Article Nineteen, Section 14 of the IA Constitution requires each affiliate local of the Alliance to collect quarterly dues of not less than five dollars over and above the amount of the per capita tax.

Local 306's quarterly dues were $34. Pursuant to Article Nineteen, Section 14, President Short ruled that the dues had to be raised to $37.

The appellants challenged President Short's ruling as upheld by the General Executive Board. They also claim, among other things, that the quarterly dues should not have been raised since Local 306 also charges a three-and-one-half percent work assessment.

Both President Short and the General Executive Board reject this argument because Article Nineteen, Section 14, refers to quarterly dues only. And the minimum dues requirement is not altered by the fact that a local union has a work assessment in addition to the quarterly dues.

Committee Member Joel Deitch did not participate in the committee's deliberation or vote.

It is the committee's unanimous recommendation that the decision of the General Executive Board be upheld.

COMMITTEE CO-CHAIRPERSON NAPOLEONE: And I so move, Mr. Chairman.

PRESIDENT SHORT: Do I have a second? Microphone No. 4.

DELEGATE SCOTT ROTH: Local 876, I second the motion.

PRESIDENT SHORT: On the question?

Just for the edification of the delegates, his name is Joel Deitch not Joel Deitch that I have heard for the last two days.

(Applause)

All right, Joel.

Anyone else on the question?
There being none, all those in favor, signify by saying aye.

Opposed?

A vote, and so ordered.

APPENDIX Q

Excerpt from Respondent Local Union's Representative Dues Amendment Ballot

(italicized emphasis added)

MOVING PICTURE PROJECTIONISTS, VIDEO TECHNICIANS AND ALLIED CRAFTS UNION LOCAL 306, IATSE

OFFICIAL SECRET BALLOT

Mark with an X or [check] in the box that indicates your vote.

In accordance with Article XI of the Constitution of Local 306, IATSE it is hereby proposed to amend Section 1 of Article VII:

The following proposed amendment to the Local 306 Constitution had its second reading at the Regular Membership meeting on April 9, 1997.

> *Percentage dues* be increased by one-half percent (½%) from three and one half percent (3 ½%) to four percent (4%) to be payable beginning for the July, August, and September dues quarter of 1997. It will apply to members who now pay (3 ½%) three and one half percent *dues*.

The purpose for this proposal is to avoid a deficit in our General Fund when contract negotiations begin in 1998. We had a serious deficit for the year ending May 31,1996 and will have again for the fiscal year ending May 31, 1997.

SHALL THE ABOVE PROPOSED AMENDMENT BE ADOPTED?

YES NO

APPENDIX R

Excerpt from
Respondent Local Union Secretary-Treasurer
Joel Deitch's Letter to Members,
8 January 1998

(italicized emphasis added)

UNION LOCAL 306
MOVING PICTURE PROJECTIONISTS, VIDEO
TECHNICIANS AND ALLIED CRAFTS
723 7th Avenue, 11th Floor
New York, New York 10019

January 8, 1998

Dear Member:

...

Dues are due in the Business office by January 21, 1998 for the January, February, March quarter. *The quarterly dues consists of $37 plus* 3.5% *of straight time earnings* for October, November, December. Remember to provide your stubs with your dues calculations. Please pay on time and avoid being delinquent and having a notice sent to your employer. Anyone found to fraudulently misrepresent their earnings for dues calculations will be brought up on charges and or sued.

...

Fraternally,
/s/ Joel Deitch
Secretary/Treasurer

...

APPENDIX S

Excerpt from
Respondent Local Union Executive Board's
Letter to Members,
4 March 1998

(italicized emphasis added)

From Your Local 306 Executive Board

Dear Brother/Sister: March 4, 1998

...

Contract negotiations should be starting shortly. Unfortunately our money situation is not good. An amendment *increase dues by ½%* bringing the *total dues to 4% plus the $37 per capita dues* was read at the February meeting and will have its second reading at the March meeting. After that a ballot will go out for your vote.

...

Fraternally,
/s/ [various executive
board members]

...

APPENDIX T

Excerpts from the Transcripts of the Initial Injunctive Proceedings at the Southern District Court of New York (Baer, J.), 3 & 8 April 1998

(italicized emphases added)

Excerpts from the First Injunctive Proceeding April 3, 1998

...

MS. CORELLO [Respondents' Counsel]: ...The union---*two officers* [Goldberg and Deitch] *from the union are here, and as soon as they go back to the office they were planning to count---tabulate the ballots. Obviously, unless there is an order contrary.*

...

THE COURT: ...I want you to tabulate the ballots in the regular course of business. *I want you to make sure that two people tabulate them, make whatever---do we have those two people here?*

MS. CORELLO: *There is a committee of five people,* your Honor.

THE COURT: *I don't want a committee. I want two people. I don't care who they are. I want them to tabulate the votes, if that's what they like to do, and not, if they don't want to do it.* And I want the tabulation as well as the ballots sealed...

Excerpts from the Second Injunctive Proceeding
April 8, 1998

...

MR. BRODSKY: ...[W]hen the defendants, Goldberg and Dietch [sic], returned to the office on Friday [April 3rd], the balloting committee were [sic] there. They could have exercised discretion and good sense and appointed one of the members of the ballot committee to be present while they were counting the ballots. Instead they sequestered themselves in the room.

THE COURT: I thought that's what I asked them to do.

MR. BRODSKY: No, *you said two members. You didn't specify.*

THE COURT: *No, I'm telling what you* [sic] *my memory is. That's the one that counts.*

MR. BRODSKY: All right, Your Honor. My concern is that the ballots are not numbered, and that there is an unlimited supply of blanks in the office, and there was no accountability. Your Honor, like I indicated in my memo, there is a procedure whereby the ballots are counted to assure the secrecy of the ballots, the separation of the envelopes. There was no guarantee what went on behind those closed doors, whether they looked and saw how each member voted.

...

THE COURT: Well, in last week's order [April 3rd], *I certainly didn't mean to contravene the constitution, so I trust that whatever tabulation was done by Messrs. Deitch and Goldberg were done in accordance with those precepts...*

...I am vacating the injunction which was sealed and kept confidential. The vote with respect to the increase to 4 percent of the work assessment or what the union has concluded to call work

APPENDIX U

Excerpt from
Respondent Local Union Secretary-Treasurer
Joel Deitch's Letter to Members,
7 May 1998

(italicized emphasis added)

UNION LOCAL 306
MOVING PICTURE PROJECTIONISTS, VIDEO
TECHNICIANS AND ALLIED CRAFTS
723 7th Avenue, 11th Floor
New York, New York 10019

May 7, 1998

Dear Member:

...

Please be reminded that the *new 4% dues* must be paid for the dues quarter of April, May and June *based on straight time earnings* during January, February and March. Members who paid their dues prior to knowing of the new 4% requirement should mail a check for the ½% difference.

...

Fraternally,
/s/ Joel Deitch
Secretary/Treasurer

...

APPENDIX V

Excerpts from Respondent Local Union's 1996 Labor-Management Annual Report (LM-2)

(*italicized emphasis added;*
Respondents' responses in **boldface**)

FORM LM-2
LABOR ORGANIZATION ANNUAL REPORT

Stage & Picture Operators AFL-CIO Local 306
723 7th Ave
New York, NY 10019

...

During the Reporting Period **[6.1.94 to 5 31.95]**...

...

18. How many members did your organization have at the end of the reporting period? **651**

...

21. What are your organization's *rates of dues* and fees?...
    (a) Regular Dues/Fees: **$32 + 3½% earning per quarter**

...

STATEMENT B – RECEIPTS AND DISBURSEMENTS

Cash Receipts	Amount
Dues	**$ 561,778**
...	
Assessments	[Blank]
...	

/s/ Steve D'Inzillo, President
/s/ Joel Deitch, Secretary-Treasurer

APPENDIX W

Excerpt from
Respondent Local Union Secretary-Treasurer
Joel Deitch's Letter to Members,
11 April 1996

UNION LOCAL 306
MOVING PICTURE PROJECTIONISTS, VIDEO
TECHNICIANS AND ALLIED CRAFTS
723 7th Avenue, 11th Floor
New York, New York 10019

April 11, 1996

Dear Member:

This advisory applies ONLY to members employed in theatres.

The Dues Resolution, which you received with your Meeting Notice, for Wednesday April 10, 1996, was discussed at this meeting, and ALL questions answered. About a dozen members participated. When all who wished to speak did so, and there were no further questions, the Resolution was put to a vote. It was adopted overwhelmingly.

Because of some of the questions asked at the meeting we offer the following clarifications for those who did not attend the meeting:

Independent Theatres

Contracts for these theatres still provide for bracketed hours on which "basic wages" (straight time) is paid. Dues are, therefore, due on your potion of the bracketed hours.

Cineplex – Sony – City Cinemas Theatres

These contracts provide "Pay time starts from the beginning of sound or projections on the regular show --- pay time ends at the conclusion of sound or projection of the regular (show), or regular scheduled daily operating hours, whichever are later ---". Members employed in these theatres, therefore, pay dues on their portion of the regular scheduled hours. These theatres by contract pay for prep time which is part of regular scheduled hours.

United Artists Theatres

This contract has the worst language provisions, for our union, of all our contracts. This is why we were close to striking and wound up with three years instead of five. It provides only that "Projectionist paid time shall start at beginning of sound or projection on the regular show ---". While the contract does not say so, it follows that pay time ends at the conclusion of sound or projection of the regular show. Therefore dues are due for your portion of the regular scheduled hours, the same as the other circuits.

Please be reminded that henceforth calculations for each dues quarter must be made on earnings of the previous quarter: For April-May-June quarter (due on April 24, 1996) calculations will be on earnings during January, February and March.

For your convenience we enclose another copy of the Resolution. With the adoption of the Dues Resolution, Dues Bills will be discontinued. As the Business Office has frequently advised: The best and easiest way to pay dues is through Dues Check Off.

...

Fraternally,
/s/ Joel Deitch
Secretary/Treasurer

...

...

APPENDIX X

Excerpts from Petitioners' Verified Complaint

23. ...[A]t Defendant **Local Union**'s membership meeting of November 1996, Plaintiff **Merrick** put forth a proposal to amend the (subsequently) defeated constitutional amendment put forth by Defendant **Local Union** to raise the "percentage dues". Said proposal provided a legitimate mechanism to harmonize Defendant **Local Union**'s basic dues component of Thirty Dollars ($30) with Defendant **International Union**'s per-capita tax.

24. Plaintiff **Merrick**'s amendment to the amendment passed but Defendant **D'Inzillo**, as President of Defendant **Local Union**, in derogation of said office and in contravention of Article V, Section 1, first and third paragraphs of said **Local Union**'s Constitution ("It shall be the duties of the President to preside at all meetings of the Union, to preserve order therein, and enforce due observance of the laws..." [1st ¶]; "He shall not make or second any motion." [3rd ¶]), commandeered the meeting, spoke negatively on the subject of Plaintiff **Merrick**'s amendment and invalidated same in a manner contrary to Robert's Rules of Order and also in contravention of Section 19 of said **Local Union**'s By-Laws ("Roberts Rules of Order shall be the authority by which the conduct of the meetings of this Union shall be conducted, except as herein provided.").

25. Thereafter, Defendants **Local Union** and **Deitch** disenfranchised Plaintiffs **Merrick** and **Howard**, and, upon information and belief, Gross, in the last two (2) successive constitutional amendment ballotings held in March and April of 1997. Such disenfranchisements were in contravention of Article VII, Section 3 of Defendant **Local Union**'s

Constitution ("To be in good standing a member must be paid up as prescribed in Section one (1) of this Article.") and §§ 101 (a)(1) & (5) of the LMRDA, 29 U.S.C. §§ 411 (a)(1) & (5).

...

31. Nevertheless, whilst awaiting the GEB Determination, the following events occurred...

g. Defendant **D'Inzillo**, while allowing Plaintiffs to stay, refused to recognize Plaintiffs' exceptions to minutes dealing directly with Plaintiffs' and other issues; nor were Plaintiffs' exceptions recorded (except on Defendant **Union Local**'s audiocassettes of the meeting). Moreover, Plaintiffs were unable to put forth any amendment to the dues amendment that would have mooted the controversy, which consequently, in its *un*amended form, is presently before Defendant **Union Local**'s members in a balloting wherefrom Defendants **Union Local** and **Deitch** have disenfranchised Plaintiffs...

i. Thereafter, the dues amendment, unaltered and unrevised, was put forth by Defendants **Local Union** and **Deitch** to the membership for a vote.

j. Defendants **Local Union** and **Deitch**, again, have disenfranchised Plaintiffs in the balloting in progress to approve the aforesaid dues amendment.

...

WHEREFORE, Plaintiffs present the following:

...

COUNT V

That Defendant **D'Inzillo**, by commandeering Defendant **Union Local**'s November 1996 meeting and invalidating the affirmative vote cast by the attending members, cast a chilling pall

over the deliberations and voting upon the business of said meeting and violated the equal rights and privileges of those voting for the amendment, including those rights and privileges of Plaintiff **Merrick**, in contravention of § 101 (a) (1) of the LMRDA, 29 U.S.C. § 411 (a) (1).

COUNT VI

That Defendant **D'Inzillo**, by commandeering Defendant **Union Local**'s November 1996 meeting and invalidating the affirmative vote cast by the attending members, violated Plaintiff **Merrick**'s right to express his views, arguments or opinions at such meeting with effect, in contravention of § 101 (a)(2) of the LMRDA, 29 U.S.C. § 411 (a)(2).

...

COUNTS X, XI and XII

That Defendants **Local Union** and **Deitch** disenfranchised Plaintiff **Merrick** in Defendant **Local Union**'s constitutional amendment ballotings held in March 1997 **(Count X)**, April 1997 **(Count XI)** and March 1998 **(Count XII)** violated his rights to vote in contravention of §§ 101 (a) (1) and 609 of the LMRDA, 29 U.S.C. §§ 411 (a)(1) and 529.

...

COUNTS XVI, XVII and XVIII

That Defendants **Local Union** and **Deitch** disenfranchised Plaintiff **Howard** in Defendant **Local Union**'s constitutional amendment ballotings held in March 1997 **(Count XVI)**, April 1997 **(Count XVII)** and March 1998 **(Count XVIII)** violated his right to vote in contravention of §§ 101 (a)(1) and 609 of the LMRDA, 29 U.S.C. §§ 411 (a)(1) and 529.

...

COUNTS XXXVI, XXXVII, XXXVIII. XXXIX, XL and XLI

That Defendant **D'Inzillo**, by his attempt to have Plaintiffs forcibly ejected from Defendant **Local Union**'s March 1998 membership meeting (**Counts XXXVI** [re Plaintiff **Merrick**] and **XXXVII** [re Plaintiff **Howard**]), by his refusal not to recognize Plaintiffs' exceptions to minutes dealing directly with Plaintiffs and other issues (**Counts XXXVIII** [re Plaintiff **Merrick**] and **XXXIX** [re Plaintiff **Howard**]), and his hindrance of Plaintiffs putting forth any amendment to the dues amendment that would have mooted the controversy (**Counts XL** [re Plaintiff **Merrick**] and **XLI** [re Plaintiff **Howard**]) cast a chilling pall over the deliberations and voting upon the business of said meeting and violated the equal rights and privileges of those voting for the amendment, including those rights and privileges of Plaintiffs, in contravention of § 101 (a) (1) of the LMRDA, 29 U.S.C. § 411 (a) (1).

COUNTS XLII, XLIII, XLIV, XLV, XLVI and XLVII

That Defendant **D'Inzillo**, by his attempt to have Plaintiffs forcibly ejected from Defendant **Local Union**'s March 1998 membership meeting (**Counts XLII** [re Plaintiff **Merrick**] and **XLIII** [re Plaintiff **Howard**]), by his refusal not to recognize Plaintiffs' exceptions to minutes dealing directly with Plaintiffs and other issues (**Counts XLIV** [re Plaintiff **Merrick**] and **XLV** [re Plaintiff **Howard**]), and his hindrance of Plaintiffs putting forth any amendment to the dues amendment that would have mooted the controversy (**Counts XLVI** [re Plaintiff **Merrick**] and **XLVII** [re Plaintiff **Howard**]) violated Plaintiffs' right to express their views, arguments or opinions at such meeting with effect, in contravention of § 101 (a)(2) of the LMRDA, 29 U.S.C. § 411 (a)(2).